

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 227

HOUSE BILL 2425

AN ACT

AMENDING SECTIONS 15-213, 28-7363, 28-7365 AND 34-101, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 34, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, TO "GENERAL PROVISIONS"; REPEALING SECTIONS 34-102 AND 34-103, ARIZONA REVISED STATUTES; AMENDING TITLE 34, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING NEW SECTIONS 34-102 AND 34-103; CHANGING THE DESIGNATION OF TITLE 34, CHAPTER 6, ARIZONA REVISED STATUTES, TO "ARCHITECT SERVICES, ASSAYER SERVICES, CONSTRUCTION SERVICES, ENGINEER SERVICES, GEOLOGIST SERVICES, LANDSCAPE ARCHITECT SERVICES AND LAND SURVEYING SERVICES"; AMENDING SECTIONS 34-601, 34-602, 34-603, 34-606, 34-610, 34-611 AND 41-2503, ARIZONA REVISED STATUTES; REPEALING SECTION 34-612, ARIZONA REVISED STATUTES; AMENDING SECTION 41-2534, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 135, SECTION 13; REPEALING SECTION 41-2534, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 316, SECTION 7; AMENDING SECTIONS 41-2573, 41-2574, 41-2578 AND 41-2579, ARIZONA REVISED STATUTES; BLENDING MULTIPLE ENACTMENTS; RELATING TO PROCUREMENT OF PROFESSIONAL AND CONSTRUCTION SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-213, Arizona Revised Statutes, is amended to
3 read:

4 15-213. Procurement practices of school districts; definitions

5 A. The state board of education shall adopt rules prescribing
6 procurement practices for all school districts in this state as follows:

7 1. The state board shall submit to the auditor general proposed rules
8 consistent with the procurement practices prescribed in title 41, chapter 23,
9 modifying the provisions for public notice of invitation for bids, requests
10 for proposals and requests for qualifications to allow a governing board to
11 give public notice of the invitation for bids, requests for proposals and
12 requests for qualifications by publication in the official newspaper of the
13 county as defined in section 11-255, modifying the provisions relating to
14 disposal of materials to comply with section 15-342, paragraph 18, providing
15 for governing board delegation of procurement authority and modifying as
16 necessary other provisions which the state board determines are not
17 appropriate for school districts, for procurement of construction,
18 CONSTRUCTION SERVICES, materials or services when the total procurement
19 exceeds thirty thousand dollars in total cost. The rules shall include
20 provisions specifying that school districts are not required to engage in
21 competitive bidding in order to make the decision to participate in programs
22 pursuant to section 15-382 and that a program authorized by section 15-382
23 is not required to engage in competitive bidding for other than the joint
24 purchase of insurance or reinsurance. The rules for procurement of
25 construction projects shall include provisions specifying that surety bonds
26 furnished as bid security and performance and payment bonds shall be executed
27 and furnished as required by title 34, chapter 2 or 6, as applicable.

28 2. The state board of education, ~~on or before July 1, 1998,~~ shall
29 adopt rules for procurements involving construction not exceeding one hundred
30 fifty thousand dollars which shall be known as the simplified school
31 construction procurement program. At a minimum, the rules for a simplified
32 construction procurement program shall require that:

33 (a) A list be maintained by each county school superintendent of
34 persons who desire to receive solicitations to bid on construction projects
35 to which additions shall be permitted throughout the year.

36 (b) The list of persons be available for public inspection.

37 (c) A performance bond and a payment bond as required by this section
38 be provided for contracts for construction by contractors.

39 (d) All bids for construction be opened at a public opening and the
40 bids shall remain confidential until the public opening.

41 (e) All persons desiring to submit bids be treated equitably and the
42 information related to each project be available to all eligible persons.

43 (f) Competition for construction projects under the simplified school
44 construction procurement program be encouraged to the maximum extent
45 possible. At a minimum, a school district shall submit information on each

1 project to all persons listed with the county school superintendent by any
2 school district within that county.

3 (g) A provision, covenant, clause or understanding in, collateral to
4 or affecting a construction contract that makes the contract subject to the
5 laws of another state or that requires any litigation, arbitration or other
6 dispute resolution proceeding arising from the contract to be conducted in
7 another state is against this state's public policy and is void and
8 unenforceable.

9 3. The auditor general shall review the proposed rules to determine
10 whether the rules are consistent with the procurement practices prescribed
11 in title 41, chapter 23 and any modifications are required to adapt the
12 procedures for school districts.

13 4. If the auditor general approves the proposed rules, the auditor
14 general shall notify the state board in writing and the state board shall
15 adopt such rules.

16 5. If the auditor general objects to the proposed rules, the auditor
17 general shall notify the state board of the objections in writing and the
18 state board, in adopting the rules, shall conform the proposed rules to meet
19 the objections of the auditor general or revise the proposed rules to which
20 an objection has been made and submit the revisions to the auditor general
21 for approval.

22 B. After the bids submitted in response to an invitation for bids are
23 opened and the award is made or after the proposals or qualifications are
24 submitted in response to a request for proposals or a request for
25 qualifications and the award is made, the governing board shall make
26 available for public inspection all information, all bids, proposals and
27 qualifications submitted and all findings and other information considered
28 in determining whose bid conforms to the invitation for bids and will be the
29 most advantageous with respect to price, conformity to the specifications and
30 other factors or whose proposal or qualifications are to be selected for the
31 award. The invitation for bids, request for proposals or request for
32 qualifications shall include a notice that all information and bids,
33 proposals and qualifications submitted will be made available for public
34 inspection. The rules adopted by the state board shall prohibit the use in
35 connection with procurement of specifications in any way proprietary to one
36 supplier unless the specification includes all of the following:

37 1. A statement of the reasons why no other specification is
38 practicable.

39 2. A description of the essential characteristics of the specified
40 product.

41 3. A statement specifically permitting an acceptable alternative
42 product to be supplied.

43 C. No project or purchase may be divided or sequenced into separate
44 projects or purchases in order to avoid the limits prescribed by the state
45 board under subsection A of this section.

1 D. A contract for the procurement of construction OR CONSTRUCTION
2 SERVICES shall include a provision which provides for negotiations between
3 the school district and the contractor for the recovery of damages related
4 to expenses incurred by the contractor for a delay for which the school
5 district is responsible, which is unreasonable under the circumstances and
6 which was not within the contemplation of the parties to the contract. This
7 section shall not be construed to void any provision in the contract which
8 requires notice of delays, provides for arbitration or other procedure for
9 settlement or provides for liquidated damages.

10 E. The auditor general may conduct discretionary reviews,
11 investigations and audits of the financial and operational procurement
12 activities of school districts, nonexempt charter schools and school
13 purchasing cooperatives. The auditor general has final review and approval
14 authority over all school district, nonexempt charter school and school
15 purchasing cooperative audit contracts and any audit reports issued in
16 accordance with this section.

17 F. In addition to the requirements of sections 15-914 and 15-914.01,
18 school districts, nonexempt charter schools and school purchasing
19 cooperatives, in connection with any audit conducted by a certified public
20 accountant, shall contract for a systematic review of purchasing practices
21 using methodology consistent with sampling guidelines established by the
22 auditor general. The auditor general shall consider cost when establishing
23 guidelines pursuant to this subsection and to the extent possible shall
24 attempt to minimize the cost of the review. The purpose of the review is to
25 determine whether the school district, nonexempt charter school or school
26 purchasing cooperative is in compliance with the procurement laws and
27 applicable procurement rules of this state. A copy of the review shall be
28 submitted upon completion to the auditor general. The auditor general may
29 conduct discretionary reviews of school districts, nonexempt charter schools
30 and school purchasing cooperatives not required to contract for independent
31 audits.

32 G. The attorney general or county attorney has jurisdiction to enforce
33 this section. The attorney general or county attorney may seek relief for
34 any violation of this section through an appropriate civil or criminal action
35 in superior court including an action to enjoin a threatened or pending
36 violation of this section and including an action to enforce compliance with
37 any request for documents made by the auditor general pursuant to this
38 section.

39 H. The department of education shall enact policies and procedures for
40 the acceptance and disposition of complaints from the public regarding school
41 procurement practices and shall forward all school procurement complaints to
42 the attorney general.

43 I. The state board of education shall adjust the total cost provided
44 for in subsection A, paragraph 1 of this section by the annual percentage
45 change in the GDP price deflator as defined in section 41-563, ~~subsection E.~~

1 J. ~~No more than one hundred twenty days after the effective date of~~
2 ~~this amendment to this section, The state board of education and the auditor~~
3 ~~general shall adopt rules authorizing school districts to procure~~
4 ~~construction services by construction-manager-at-risk, design-build and~~
5 ~~job-order-contracting methods of project delivery. The rules adopted shall~~
6 ~~require each school district that uses construction-manager-at-risk,~~
7 ~~design-build or job-order-contracting to procure construction services to~~
8 ~~submit, on or before January 15 of each year, a report to the state board of~~
9 ~~education, the governor, the president of the senate, the speaker of the~~
10 ~~house of representatives, the secretary of state and the director of the~~
11 ~~department of library, archives and public records on the total benefits~~
12 ~~associated with the use of such procurement methods. The report shall~~
13 ~~include a statement of costs incurred by the school district in securing~~
14 ~~these services, any overall administrative benefits realized through the use~~
15 ~~of the procurement methods, the number of projects begun COMPLETED in the~~
16 ~~preceding calendar year using that procurement method, the cost and~~
17 ~~description of each project, any anticipated cost savings resulting from the~~
18 ~~use of that procurement method and any actual AN ESTIMATE OF ANY cost savings~~
19 ~~OR OTHER BENEFITS realized through the use of that procurement method. and~~
20 ~~any other information that the state board of education deems necessary and~~
21 ~~appropriate. The report is a requirement for participation in~~
22 ~~construction-manager-at-risk, design-build or job-order-contracting~~
23 ~~procurement agreements.~~

24 K. Until the rules prescribed in subsection J of this section are
25 adopted, school districts may procure construction services by the
26 construction-manager-at-risk, design-build and job-order-contracting methods
27 of project delivery as provided in title 41, chapter 23, except that the
28 rules adopted by the director of the department of administration do not
29 apply. Any procurement commenced pursuant to this subsection may be
30 completed pursuant to this subsection regardless of the adoption of rules by
31 the state board of education and the auditor general.

32 L. THE DOLLAR AMOUNT OF EACH JOB ORDER UNDER ANY JOB-ORDER-CONTRACTING
33 CONSTRUCTION SERVICES PROGRAM SHALL NOT BE MORE THAN THE DOLLAR AMOUNT
34 DETERMINED PURSUANT TO SECTION 41-2578, SUBSECTION J, PARAGRAPH 1.

35 ~~L.~~ M. For the purposes of this section:

36 1. "Nonexempt charter school" means a charter school that is not
37 exempted from procurement laws pursuant to section 15-183, subsection E,
38 paragraph 6.

39 2. "School purchasing cooperative" means an entity engaged in
40 cooperative purchasing as defined in section 41-2631.

41 3. "Total cost" means the cost of all materials and services,
42 including the cost of labor performed by employees of the school district,
43 for all construction as provided in subsection A of this section.

1 Sec. 2. Section 28-7363, Arizona Revised Statutes, is amended to read:
2 28-7363. Design-build method of project delivery; report

3 A. Notwithstanding any other law, the department may use the
4 design-build method of project delivery on a project if the department makes
5 a determination in writing that it is appropriate and in the best interests
6 of the department to use the design-build method of project delivery for that
7 project, except that:

8 1. The department shall not enter into a contract to operate any
9 structure, facility or other item pursuant to this article.

10 2. The department shall not enter into contracts for more than two
11 design-build projects in each fiscal year.

12 3. Each design-build project shall be a specific, single project with
13 a minimum construction cost of forty million dollars. The department shall
14 not artificially combine or aggregate projects in order to circumvent the
15 minimum construction cost requirement. For the purposes of this paragraph,
16 "specific, single project" means a project that is constructed at a single
17 location, at a common location or for a common purpose.

18 4. The department shall not commence any design-build project after
19 June 30, 2007. For the purposes of this paragraph, a project is commenced
20 on the date the department and design-builder execute the contract for the
21 project. If the department and design-builder execute a design-build
22 contract on or before June 30, 2007, services and construction under the
23 contract may be rendered in whole or in part after June 30, 2007.

24 B. The estimated cost of the project shall not include the cost to
25 procure any right-of-way or other cost of condemnation. The cost to procure
26 any right-of-way or other cost of condemnation remains at all times the
27 responsibility of the department. The department shall obtain all necessary
28 rights-of-way.

29 C. The department is responsible for preparation and acquisition of
30 all environmental documents, including the scope of any remediation and
31 required clearances.

32 D. If construction of a design-build project involves railroad
33 facilities, the railroad shall approve the use of the design-build delivery
34 method before the department awards the design-build contract.

35 E. To ensure fair, uniform, clear and effective procedures that will
36 deliver a quality project on time and within budget, the director, in
37 conjunction with the appropriate and affected professionals and contractors,
38 may adopt procedures for procuring a project using the design-build method
39 of project delivery.

40 F. The provisions of sections 28-6923 and 28-6924 relating to bid,
41 performance and payment bonds and to change orders, progress payments,
42 contract retentions, definitions and authority to award contracts apply to
43 department design-build projects for transportation facilities pursuant to
44 this article.

1 G. On or before January 15 of each year, the director of the
2 department of transportation shall transmit to the ~~governor, the president~~
3 ~~of the senate, the speaker of the house of representatives,~~ the secretary of
4 state and the director of the department of library, archives and public
5 records a report on the total benefits associated with the use of
6 design-build in procuring construction services. The report shall include
7 ~~a statement of costs incurred in securing the services, any overall~~
8 ~~administrative benefits realized through the use of design-build, the number~~
9 ~~of projects begun COMPLETED in the preceding calendar year using~~
10 ~~design-build, and the cost and description of each project, any anticipated~~
11 ~~cost savings resulting from the use of that procurement method and any actual~~
12 ~~AN ESTIMATE OF ANY cost savings OR OTHER BENEFITS realized through the use~~
13 ~~of that procurement method.~~

14 Sec. 3. Section 28-7365, Arizona Revised Statutes, is amended to read:
15 28-7365. Design-build; two-phase solicitation

16 A. If the department determines that the design-build method of
17 project delivery is appropriate, the department shall establish a two-phase
18 procedure for awarding the design-build contract.

19 B. During phase one, and before solicitation, the director shall
20 appoint a selection team of at least three persons. At least one-half of the
21 selection team shall be architects or engineers who are registered pursuant
22 to section 32-121. The selection team members may be either department
23 employees or outside consultants. The selection team shall also include a
24 licensed contractor who is not involved in the project. Any architect or
25 engineer who is serving on the selection team and who is not a department
26 employee shall not be otherwise involved in the project. The department
27 shall prepare documents for a request for qualifications.

28 C. The request for qualifications shall include all of the following:

29 1. The minimum qualifications of the design-builder.

30 2. A scope of work statement and schedule.

31 3. Documents defining the project requirements.

32 4. The form of contract to be awarded.

33 5. The selection criteria for compiling a short list and the number
34 of firms to be included on the short list. At least three but not more than
35 five firms shall be included on the short list.

36 6. A description of the phase two requirements and subsequent
37 management needed to bring the project to completion.

38 7. The maximum time allowable for design and construction.

39 8. The department's estimated cost of design and construction.

40 D. The selection team shall evaluate the design-build qualifications
41 of responding firms and shall compile a short list of firms in accordance
42 with technical and qualifications-based criteria. The number of firms on the
43 short list shall be the number of firms specified in the request for
44 qualifications, except that, if a smaller number of firms responds to the
45 solicitation or if one or more of the firms on the short list drop out so

1 that only two firms remain on the short list, the selection team may proceed
2 with the selection process with the remaining firms if at least two firms
3 remain or the selection team may readvertise as the selection team deems
4 necessary.

5 E. During phase two, the department shall issue a request for
6 proposals to the design-builders on the short list. The request shall
7 include:

8 1. The scope of work, including programmatic, performance and
9 technical requirements, conceptual design, specifications and functional and
10 operational elements for the delivery of the completed project, which shall
11 all be prepared by an architect or engineer, as appropriate, who is
12 registered pursuant to section 32-121.

13 2. A description of the qualifications required of the design-builder
14 and the selection criteria, including the weight or relative order, or both,
15 of each criterion.

16 3. Copies of the contract documents that the successful proposer will
17 be expected to sign.

18 4. The maximum time allowable for design and construction.

19 5. The department's estimated cost of design and construction.

20 6. The requirement that a proposal be segmented into two parts, a
21 technical proposal and a price proposal. Each proposal shall be in a
22 separately sealed, clearly identified package and shall include the date and
23 time of the submittal deadline. The technical proposal shall include a
24 schedule, schematic design plans and specifications, technical reports,
25 calculations, permit requirements, applicable development fees and other data
26 requested in the request for proposals. The price proposal shall contain all
27 design, construction, engineering, inspection and construction costs of the
28 proposed project.

29 7. The date, time and location of the public opening of the sealed
30 price proposals.

31 8. Other information relevant to the project.

32 F. After reviewing the proposals, the department shall proceed as
33 follows:

34 1. The selection team shall score the technical proposals using the
35 selection criteria in the request for proposals. The technical review team
36 shall then submit a technical proposal score for each design-builder to the
37 department. The technical review team shall reject any proposal it deems to
38 be nonresponsive.

39 2. The department shall announce the technical proposal score for each
40 design-builder, shall publicly open the sealed price proposals and shall
41 divide each design-builder's price by the score that the selection team has
42 given to it to obtain an adjusted score. The design-builder selected shall
43 be that responsive and responsible design-builder whose adjusted score is the
44 lowest.

1 3. If a time factor is included with the selection criteria in the
2 request for proposals package, the department may also adjust the bids using
3 a value of the time factor established by the department. The value of the
4 time factor shall be a value per day. The adjustment shall be based on the
5 total time value. The total time value is the design-builder's proposed
6 number of days to complete the project multiplied by the factor. The time
7 adjusted price is the total time value plus the bid amount. This adjustment
8 shall be used for selection purposes only and shall not affect the
9 department's liquidated damages schedule or incentive and disincentive
10 program. An adjusted score shall then be obtained by dividing each
11 design-builder's time adjusted price by the score given by the technical
12 review team. The department shall select the responsive and responsible
13 design-builder whose adjusted score is the lowest.

14 4. Unless all proposals are rejected, the board shall award the
15 contract to the responsive and responsible design-builder with the lowest
16 adjusted score. The board reserves the right to reject all proposals.

17 5. The department shall award a stipulated fee equal to two-tenths of
18 one per cent of the department's estimated cost of design and construction
19 to each short list responsible proposer who provides a responsive, but
20 unsuccessful proposal. If the department does not award a contract, all
21 responsive proposers shall receive the stipulated fee. If the department
22 cancels the contract before reviewing the technical proposals, the department
23 shall award each design-builder on the selected short list a stipulated fee
24 equal to two-tenths of one per cent of the department's estimated cost of
25 design and construction. The department shall pay the stipulated fee to each
26 proposer within ninety days after the award of the contract or the decision
27 not to award a contract. In consideration for paying the stipulated fee, the
28 department may use any ideas or information contained in the proposals in
29 connection with any contract awarded for the project, or in connection with
30 a subsequent procurement, without any obligation to pay any additional
31 compensation to the unsuccessful proposers. Notwithstanding the other
32 provisions of this paragraph, an unsuccessful short list proposer may elect
33 to waive the stipulated fee. If an unsuccessful short list proposer elects
34 to waive the stipulated fee, the department may not use ideas and information
35 contained in the proposer's proposal, EXCEPT THAT THIS RESTRICTION DOES NOT
36 PREVENT THE DEPARTMENT FROM USING ANY IDEA OR INFORMATION IF THE IDEA OR
37 INFORMATION IS ALSO INCLUDED IN A PROPOSAL OF A SHORT LIST PROPOSER THAT
38 ACCEPTS THE STIPULATED FEE.

39 Sec. 4. Heading change

40 The article heading of title 34, chapter 1, article 1, Arizona Revised
41 Statutes, is changed from "ARCHITECTS AND ENGINEERS" to "GENERAL PROVISIONS".

42 Sec. 5. Section 34-101, Arizona Revised Statutes, is amended to read:

43 34-101. Definitions

44 In this title, unless the context otherwise requires: —

45 1. "Agent":

1 (a) Means any county, city or town, or officer, board or, commission
2 thereof, and irrigation, power, electrical, drainage and flood control
3 districts, tax levying public improvement districts, and county or city
4 improvement districts. The

5 (b) INCLUDES ANY county board of supervisors may authorize
6 representatives AND ANY REPRESENTATIVE AUTHORIZED BY AN AGENT to act as
7 agents AN AGENT for the purpose of authorizing necessary change orders to
8 previously awarded contracts in accordance with guidelines set ESTABLISHED
9 by RULE OF the AGENT, INCLUDING THE board of supervisors.

10 2. "ARCHITECT SERVICES" MEANS THOSE PROFESSIONAL ARCHITECT SERVICES
11 THAT ARE WITHIN THE SCOPE OF ARCHITECTURAL PRACTICE AS PROVIDED IN TITLE 32,
12 CHAPTER 1.

13 3. "CONSTRUCTION":

14 (a) MEANS THE PROCESS OF BUILDING, ALTERING, REPAIRING, IMPROVING OR
15 DEMOLISHING ANY PUBLIC STRUCTURE OR BUILDING OR OTHER PUBLIC IMPROVEMENTS OF
16 ANY KIND TO ANY PUBLIC REAL PROPERTY.

17 (b) DOES NOT INCLUDE THE ROUTINE OPERATION, ROUTINE REPAIR OR ROUTINE
18 MAINTENANCE OF EXISTING FACILITIES, STRUCTURES, BUILDINGS OR REAL PROPERTY
19 OR DEMOLITION PROJECTS COSTING LESS THAN TWO HUNDRED THOUSAND DOLLARS.

20 4. "CONSTRUCTION-MANAGER-AT-RISK" MEANS A PROJECT DELIVERY METHOD IN
21 WHICH:

22 (a) THERE IS A SEPARATE CONTRACT FOR DESIGN SERVICES AND A SEPARATE
23 CONTRACT FOR CONSTRUCTION SERVICES.

24 (b) THE CONTRACT FOR CONSTRUCTION SERVICES MAY BE ENTERED INTO AT THE
25 SAME TIME AS THE CONTRACT FOR DESIGN SERVICES OR AT A LATER TIME.

26 (c) DESIGN AND CONSTRUCTION OF THE PROJECT MAY BE IN SEQUENTIAL PHASES
27 OR CONCURRENT PHASES.

28 (d) FINANCE SERVICES, MAINTENANCE SERVICES, OPERATIONS SERVICES,
29 PRECONSTRUCTION SERVICES AND OTHER RELATED SERVICES MAY BE INCLUDED.

30 5. "CONSTRUCTION SERVICES" MEANS EITHER OF THE FOLLOWING FOR
31 CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD AND JOB-ORDER-CONTRACTING PROJECT
32 DELIVERY METHODS:

33 (a) CONSTRUCTION, EXCLUDING SERVICES, THROUGH THE
34 CONSTRUCTION-MANAGER-AT-RISK OR JOB-ORDER-CONTRACTING PROJECT DELIVERY
35 METHODS.

36 (b) A COMBINATION OF CONSTRUCTION AND, AS ELECTED BY THE AGENT, ONE
37 OR MORE RELATED SERVICES, SUCH AS FINANCE SERVICES, MAINTENANCE SERVICES,
38 OPERATIONS SERVICES, DESIGN SERVICES AND PRECONSTRUCTION SERVICES, AS THOSE
39 SERVICES ARE AUTHORIZED IN THE DEFINITIONS OF CONSTRUCTION-MANAGER-AT-RISK,
40 DESIGN-BUILD OR JOB-ORDER-CONTRACTING IN THIS SECTION.

41 6. "CONTRACT" MEANS ALL TYPES OF AGENT AGREEMENTS, REGARDLESS OF WHAT
42 THEY ARE CALLED, FOR THE PROCUREMENT OF SERVICES PURSUANT TO THIS TITLE.

43 7. "CONTRACTOR" MEANS ANY PERSON WHO HAS A CONTRACT WITH AN AGENT.

44 8. "DESIGN-BID-BUILD" MEANS A PROJECT DELIVERY METHOD IN WHICH:

45 (a) THERE IS A SEQUENTIAL AWARD OF TWO SEPARATE CONTRACTS.

1 (b) THE FIRST CONTRACT IS FOR DESIGN SERVICES.

2 (c) THE SECOND CONTRACT IS FOR CONSTRUCTION.

3 (d) DESIGN AND CONSTRUCTION OF THE PROJECT ARE IN SEQUENTIAL PHASES.

4 (e) FINANCE SERVICES, MAINTENANCE SERVICES AND OPERATIONS SERVICES ARE
5 NOT INCLUDED.

6 9. "DESIGN-BUILD" MEANS A PROJECT DELIVERY METHOD IN WHICH:

7 (a) THERE IS A SINGLE CONTRACT FOR DESIGN SERVICES AND CONSTRUCTION
8 SERVICES.

9 (b) DESIGN AND CONSTRUCTION OF THE PROJECT MAY BE IN SEQUENTIAL PHASES
10 OR CONCURRENT PHASES.

11 (c) FINANCE SERVICES, MAINTENANCE SERVICES, OPERATIONS SERVICES,
12 PRECONSTRUCTION SERVICES AND OTHER RELATED SERVICES MAY BE INCLUDED.

13 10. "DESIGN REQUIREMENTS":

14 (a) MEANS AT A MINIMUM THE AGENT'S WRITTEN DESCRIPTION OF THE PROJECT
15 OR SERVICE TO BE PROCURED, INCLUDING:

16 (i) THE REQUIRED FEATURES, FUNCTIONS, CHARACTERISTICS, QUALITIES AND
17 PROPERTIES.

18 (ii) THE ANTICIPATED SCHEDULE, INCLUDING START, DURATION AND
19 COMPLETION.

20 (iii) THE ESTIMATED BUDGETS APPLICABLE TO THE SPECIFIC PROCUREMENT FOR
21 DESIGN AND CONSTRUCTION AND, IF APPLICABLE, FOR OPERATION AND MAINTENANCE.

22 (b) MAY INCLUDE:

23 (i) DRAWINGS AND OTHER DOCUMENTS ILLUSTRATING THE SCALE AND
24 RELATIONSHIP OF THE FEATURES, FUNCTIONS AND CHARACTERISTICS OF THE PROJECT,
25 WHICH SHALL ALL BE PREPARED BY AN ARCHITECT OR ENGINEER, AS APPROPRIATE, WHO
26 IS REGISTERED PURSUANT TO SECTION 32-121.

27 (ii) ADDITIONAL DESIGN INFORMATION OR DOCUMENTS THAT THE AGENT ELECTS
28 TO INCLUDE.

29 11. "DESIGN SERVICES" MEANS ARCHITECT SERVICES, ENGINEER SERVICES OR
30 LANDSCAPE ARCHITECT SERVICES.

31 12. "DIRECT SELECTION" MEANS THE SELECTION OF A TECHNICAL REGISTRANT
32 WITHOUT THE REQUIREMENT OF ADVERTISING OR THE USE OF A CURRENT REGISTER.

33 13. "ENGINEER SERVICES" MEANS THOSE PROFESSIONAL ENGINEER SERVICES THAT
34 ARE WITHIN THE SCOPE OF ENGINEERING PRACTICE AS PROVIDED IN TITLE 32, CHAPTER
35 1.

36 14. "FINANCE SERVICES" MEANS FINANCING FOR A CONSTRUCTION SERVICES
37 PROJECT.

38 15. "HORIZONTAL CONSTRUCTION" MEANS HIGHWAYS, ROADS, STREETS, BRIDGES,
39 CANALS, FLOODWAYS, EARTHEN DAMS AND LANDFILLS.

40 16. "JOB-ORDER-CONTRACTING" MEANS A PROJECT DELIVERY METHOD IN WHICH:
41 (a) THE CONTRACT IS A REQUIREMENTS CONTRACT FOR INDEFINITE QUANTITIES
42 OF CONSTRUCTION.

43 (b) THE CONSTRUCTION TO BE PERFORMED IS SPECIFIED IN JOB ORDERS ISSUED
44 DURING THE CONTRACT.

1 (c) FINANCE SERVICES, MAINTENANCE SERVICES, OPERATIONS SERVICES,
2 PRECONSTRUCTION SERVICES, DESIGN SERVICES AND OTHER RELATED SERVICES MAY BE
3 INCLUDED.

4 17. "LANDSCAPE ARCHITECT SERVICES" MEANS THOSE PROFESSIONAL LANDSCAPE
5 ARCHITECT SERVICES THAT ARE WITHIN THE SCOPE OF LANDSCAPE ARCHITECTURAL
6 PRACTICE AS PROVIDED IN TITLE 32, CHAPTER 1.

7 18. "MAINTENANCE SERVICES" MEANS ROUTINE MAINTENANCE, REPAIR AND
8 REPLACEMENT OF EXISTING FACILITIES, STRUCTURES, BUILDINGS OR REAL PROPERTY.

9 19. "MATERIALS":

10 (a) MEANS ALL PROPERTY, INCLUDING EQUIPMENT, SUPPLIES, PRINTING,
11 INSURANCE AND LEASES OF PROPERTY.

12 (b) DOES NOT INCLUDE LAND, A PERMANENT INTEREST IN LAND OR REAL
13 PROPERTY OR LEASING SPACE.

14 20. "OPERATIONS SERVICES" MEANS ROUTINE OPERATION OF EXISTING
15 FACILITIES, STRUCTURES, BUILDINGS OR REAL PROPERTY.

16 21. "PERSON" MEANS ANY CORPORATION, BUSINESS, INDIVIDUAL, UNION,
17 COMMITTEE, CLUB, OTHER ORGANIZATION OR GROUP OF INDIVIDUALS.

18 22. "PRECONSTRUCTION SERVICES" MEANS ADVICE DURING THE DESIGN PHASE.

19 23. "PROCUREMENT":

20 (a) MEANS BUYING, PURCHASING, RENTING, LEASING OR OTHERWISE ACQUIRING
21 ANY MATERIALS, SERVICES, CONSTRUCTION OR CONSTRUCTION SERVICES.

22 (b) INCLUDES ALL FUNCTIONS THAT PERTAIN TO OBTAINING ANY MATERIAL,
23 SERVICES, CONSTRUCTION OR CONSTRUCTION SERVICES, INCLUDING DESCRIPTION OF
24 REQUIREMENTS, SELECTION AND SOLICITATION OF SOURCES, PREPARATION AND AWARD
25 OF CONTRACT AND ALL PHASES OF CONTRACT ADMINISTRATION.

26 24. "PUBLIC COMPETITION" MEANS A COMPETITIVE PROCUREMENT PROCESS
27 PURSUANT TO SECTION 34-103, SUBSECTION G THAT INCLUDES ADVERTISING IN A
28 PUBLIC NEWSPAPER AND A QUALIFICATION-BASED SELECTION PROCESS.

29 25. "SERVICES":

30 (a) MEANS THE FURNISHING OF LABOR, TIME OR EFFORT BY A CONTRACTOR OR
31 SUBCONTRACTOR THAT DOES NOT INVOLVE THE DELIVERY OF A SPECIFIC END PRODUCT
32 OTHER THAN REQUIRED REPORTS AND PERFORMANCE.

33 (b) DOES NOT INCLUDE EMPLOYMENT AGREEMENTS OR COLLECTIVE BARGAINING
34 AGREEMENTS.

35 26. "SUBCONTRACTOR" MEANS A PERSON WHO CONTRACTS TO PERFORM WORK OR
36 RENDER SERVICE TO A CONTRACTOR OR TO ANOTHER SUBCONTRACTOR AS A PART OF A
37 CONTRACT WITH AN AGENT.

38 27. "TECHNICAL REGISTRANT" MEANS A PERSON WHO PROVIDES ANY OF THE
39 PROFESSIONAL SERVICES LISTED IN TITLE 32, CHAPTER 1.

40 Sec. 6. Repeal

41 Sections 34-102 and 34-103, Arizona Revised Statutes, are repealed.

1 Sec. 7. Title 34, chapter 1, article 1, Arizona Revised Statutes, is
2 amended by adding new sections 34-102 and 34-103, to read:

3 34-102. Multiple contracts

4 A. AN AGENT MAY AWARD MULTIPLE CONTRACTS FROM A SINGLE SOLICITATION
5 FOR ALL CONTRACTS FOR PROFESSIONAL SERVICES PROVIDED BY TECHNICAL
6 REGISTRANTS, EXCEPT FOR SERVICES PROVIDED UNDER THE DESIGN-BUILD OR
7 CONSTRUCTION-MANAGER-AT-RISK PROJECT DELIVERY METHODS.

8 B. AGENTS SHALL PROCURE MULTIPLE CONTRACTS FOR JOB-ORDER-CONTRACTING
9 CONSTRUCTION SERVICES CONTRACTS PURSUANT TO CHAPTER 6 OF THIS TITLE.

10 C. IF A SOLICITATION FOR MULTIPLE CONTRACTS IS PUBLISHED, THE
11 PUBLICATION SHALL INCLUDE THE FACT THAT MULTIPLE CONTRACTS MAY OR WILL BE
12 AWARDED.

13 34-103. Employment of technical registrants for work on public
14 buildings and structures; direct selection; short
15 list selection; public competition

16 A. AN AGENT SHALL PROCURE PROFESSIONAL SERVICES FROM A TECHNICAL
17 REGISTRANT IN THE MANNER PRESCRIBED IN CHAPTER 6 OF THIS TITLE IF EITHER OF
18 THE FOLLOWING APPLIES:

19 1. THE CONTRACT IS WITH A TECHNICAL REGISTRANT OTHER THAN AN ARCHITECT
20 AND IS FOR AN AMOUNT OF MORE THAN FIVE HUNDRED THOUSAND DOLLARS.

21 2. THE CONTRACT IS WITH AN ARCHITECT AND IS FOR AN AMOUNT OF MORE THAN
22 TWO HUNDRED FIFTY THOUSAND DOLLARS.

23 B. AN AGENT MAY PROCURE PROFESSIONAL SERVICES FROM A TECHNICAL
24 REGISTRANT IN THE MANNER PRESCRIBED IN CHAPTER 6 OF THIS TITLE OR AS
25 PRESCRIBED IN SUBSECTION D IF EITHER OF THE FOLLOWING APPLIES:

26 1. THE CONTRACT IS WITH A TECHNICAL REGISTRANT OTHER THAN AN ARCHITECT
27 AND IS FOR AN AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS OR LESS.

28 2. THE CONTRACT IS WITH AN ARCHITECT AND IS FOR AN AMOUNT OF TWO
29 HUNDRED FIFTY THOUSAND DOLLARS OR LESS.

30 C. IF AUTHORITY IS GIVEN BY LAW TO AN AGENT TO CONSTRUCT A BUILDING
31 OR STRUCTURE, OR ADDITIONS TO OR ALTERATIONS OF EXISTING BUILDINGS, AN AGENT
32 SHALL EMPLOY AN ARCHITECT OR ENGINEER, OR BOTH, AS WARRANTED BY THE TYPE OF
33 CONSTRUCTION, IF THE AGENT DEEMS THE WORK TO BE OF A NATURE THAT REQUIRES
34 SUCH EMPLOYMENT.

35 D. AN AGENT MAY EMPLOY A TECHNICAL REGISTRANT BY DIRECT SELECTION, BY
36 PUBLIC COMPETITION PURSUANT TO SUBSECTION G OR PURSUANT TO SUBSECTIONS E AND
37 F IF EITHER OF THE FOLLOWING APPLIES:

38 1. THE CONTRACT IS WITH A TECHNICAL REGISTRANT OTHER THAN AN ARCHITECT
39 AND IS FOR AN AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS OR LESS.

40 2. THE CONTRACT IS WITH AN ARCHITECT AND IS FOR AN AMOUNT OF TWO
41 HUNDRED FIFTY THOUSAND DOLLARS OR LESS.

42 E. THE AGENT MAY ELECT TO EMPLOY A TECHNICAL REGISTRANT BY ENCOURAGING
43 PERSONS OR FIRMS ENGAGED IN THE LAWFUL PRACTICE OF THE PROFESSION TO SUBMIT
44 ANNUALLY A STATEMENT OF QUALIFICATIONS AND EXPERIENCE. IF THE AGENT ELECTS
45 TO EMPLOY A TECHNICAL REGISTRANT BY THIS METHOD, THE AGENT SHALL INITIATE AN

1 APPROPRIATELY QUALIFIED SELECTION COMMITTEE FOR EACH CONTRACT IN ACCORDANCE
2 WITH RULES ADOPTED BY THE AGENT. THE SELECTION COMMITTEE SHALL EVALUATE
3 CURRENT STATEMENTS OF QUALIFICATIONS AND EXPERIENCE ON FILE WITH THE AGENT
4 TOGETHER WITH THOSE THAT MAY BE SUBMITTED BY OTHER PERSONS OR FIRMS REGARDING
5 THE PROPOSED CONTRACT. IF POSSIBLE AND PRACTICABLE, THE SELECTION COMMITTEE
6 SHALL CONDUCT DISCUSSIONS WITH AT LEAST THREE PERSONS OR FIRMS REGARDING THE
7 CONTRACT AND THE RELATIVE METHODS OF FURNISHING THE REQUIRED SERVICES AND,
8 IF POSSIBLE, SHALL SELECT, IN ORDER OF PREFERENCE AND BASED ON CRITERIA
9 ESTABLISHED AND PUBLISHED BY THE SELECTION COMMITTEE, A SHORT LIST OF AT
10 LEAST THREE OF THE PERSONS OR FIRMS DEEMED TO BE THE MOST QUALIFIED TO
11 PROVIDE THE SERVICES REQUIRED. THE SELECTION COMMITTEE:

12 1. SHALL BASE THE SELECTION OF THE SHORT LIST AND ORDER OF PREFERENCE
13 ON DEMONSTRATED COMPETENCE AND QUALIFICATIONS ONLY.

14 2. SHALL NOT REQUEST OR CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER
15 COST INFORMATION IN THE SELECTION OF THE SHORT LIST OR ORDER OF PREFERENCE.

16 F. AFTER A SHORT LIST IS SELECTED, THE AGENT SHALL ENTER INTO
17 NEGOTIATIONS FOR A CONTRACT WITH THE MOST QUALIFIED PERSON OR FIRM FOR THE
18 PROFESSIONAL SERVICES. THE NEGOTIATIONS SHALL INCLUDE CONSIDERATION OF
19 COMPENSATION AND OTHER CONTRACT TERMS THAT THE AGENT DETERMINES TO BE FAIR
20 AND REASONABLE TO THE AGENT. IN MAKING THIS DETERMINATION, THE AGENT SHALL
21 TAKE INTO ACCOUNT THE ESTIMATED VALUE, THE SCOPE, THE COMPLEXITY AND THE
22 NATURE OF THE PROFESSIONAL SERVICES TO BE RENDERED. IF THE AGENT IS NOT ABLE
23 TO NEGOTIATE A SATISFACTORY CONTRACT WITH THE PERSON OR FIRM CONSIDERED BY
24 THE AGENT TO BE THE MOST QUALIFIED AT A PRICE AND ON OTHER CONTRACT TERMS THE
25 AGENT DETERMINES TO BE FAIR AND REASONABLE, THE AGENT SHALL FORMALLY
26 TERMINATE NEGOTIATIONS WITH THAT PERSON OR FIRM. THE AGENT MAY ENTER INTO
27 NEGOTIATIONS WITH THE NEXT MOST QUALIFIED PERSON OR FIRM IN SEQUENCE UNTIL
28 AN AGREEMENT IS REACHED OR A DETERMINATION IS MADE TO REJECT ALL PERSONS OR
29 FIRMS ON THE SHORT LIST.

30 G. IF COMPETITIVE DESIGNS ARE SOLICITED, THE AGENT SHALL PUBLISH
31 NOTICE OF THE COMPETITION AT LEAST THIRTY DAYS BEFORE THE DATE SET FOR
32 CLOSING THE COMPETITION. THE NOTICE SHALL INCLUDE THE FOLLOWING:

33 1. THE PROJECT TITLE AND DESCRIPTION.
34 2. THE DESIGN AND CONSTRUCTION BUDGET.
35 3. THE COMPETITIVE PROCESS AND CRITERIA TO BE USED TO SELECT THE
36 WINNING OFFEROR.

37 4. THE AMOUNT OF THE STIPEND TO BE PAID TO THE UNSUCCESSFUL OFFERORS.

38 5. THE OFFERORS' RESPONSE DATE.

39 6. THE PERSON TO CONTACT TO OBTAIN ADDITIONAL INFORMATION REGARDING
40 THE COMPETITION.

41 7. ANY OTHER REQUIREMENTS ESTABLISHED BY THE AGENT AS APPROPRIATE.

42 Sec. 8. Heading change

43 The chapter heading of title 34, chapter 6, Arizona Revised Statutes,
44 is changed from "ARCHITECT SERVICES, CONSTRUCTION SERVICES, ENGINEER SERVICES
45 AND LANDSCAPE ARCHITECT SERVICES" to "ARCHITECT SERVICES, ASSAYER SERVICES,

1 CONSTRUCTION SERVICES, ENGINEER SERVICES, GEOLOGIST SERVICES, LANDSCAPE
2 ARCHITECT SERVICES AND LAND SURVEYING SERVICES".

3 Sec. 9. Section 34-601, Arizona Revised Statutes, is amended to read:

4 34-601. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. ~~"Architect services" means those professional architect services~~
7 ~~that are within the scope of architectural practice as provided in title 32,~~
8 ~~chapter 1.~~

9 2. ~~"Construction":~~

10 ~~(a) Means the process of building, altering, repairing, improving or~~
11 ~~demolishing any public structure or building or other public improvements of~~
12 ~~any kind to any public real property.~~

13 ~~(b) Does not include the routine operation, routine repair or routine~~
14 ~~maintenance of existing facilities, structures, buildings or real property.~~

15 3. ~~"Construction-manager-at-risk" means a project delivery method in~~
16 ~~which:~~

17 ~~(a) There is a separate contract for design services and a separate~~
18 ~~contract for construction services.~~

19 ~~(b) The contract for construction services may be entered into at the~~
20 ~~same time as the contract for design services or at a later time.~~

21 ~~(c) Design and construction of the project may be in sequential phases~~
22 ~~or concurrent phases.~~

23 ~~(d) Finance services, maintenance services, operations services,~~
24 ~~preconstruction services and other related services may be included.~~

25 4. ~~"Construction services" means either of the following for~~
26 ~~construction-manager-at-risk, design-build and job-order-contracting project~~
27 ~~delivery methods:~~

28 ~~(a) Construction, excluding services, through the~~
29 ~~construction-manager-at-risk or job-order-contracting project delivery~~
30 ~~methods.~~

31 ~~(b) A combination of construction and, as elected by the agent, one~~
32 ~~or more related services, such as finance services, maintenance services,~~
33 ~~operations services, design services and preconstruction services, as those~~
34 ~~services are authorized in the definitions of construction-manager-at-risk,~~
35 ~~design-build or job-order-contracting in this section.~~

36 5. 1. "Contract" means all types of agent agreements, regardless of
37 what they are called, for the procurement of ASSAYER SERVICES, construction
38 services, or design services, GEOLOGIST SERVICES OR LAND SURVEYING SERVICES.

39 6. 2. "Contractor" means any person who has a contract with an agent
40 for ASSAYER SERVICES, construction services, or design services, GEOLOGIST
41 SERVICES OR LAND SURVEYING SERVICES.

42 7. ~~"Design-bid-build" means a project delivery method in which:~~

43 ~~(a) There is a sequential award of two separate contracts.~~

44 ~~(b) The first contract is for design services.~~

45 ~~(c) The second contract is for construction.~~

- 1 ~~(d) Design and construction of the project are in sequential phases.~~
2 ~~(e) Finance services, maintenance services and operations services are~~
3 ~~not included.~~
4 ~~8. "Design-build" means a project delivery method in which:~~
5 ~~(a) There is a single contract for design services and construction~~
6 ~~services.~~
7 ~~(b) Design and construction of the project may be in sequential phases~~
8 ~~or concurrent phases.~~
9 ~~(c) Finance services, maintenance services, operations services,~~
10 ~~design services, preconstruction services and other related services may be~~
11 ~~included.~~
12 ~~9. "Design requirements":~~
13 ~~(a) Means at a minimum the agent's written description of the project~~
14 ~~or service to be procured, including:~~
15 ~~(i) The required features, functions, characteristics, qualities and~~
16 ~~properties.~~
17 ~~(ii) The anticipated schedule, including start, duration and~~
18 ~~completion.~~
19 ~~(iii) The estimated budgets applicable to the specific procurement for~~
20 ~~design and construction and, if applicable, for operation and maintenance.~~
21 ~~(b) May include:~~
22 ~~(i) Drawings and other documents illustrating the scale and~~
23 ~~relationship of the features, functions and characteristics of the project,~~
24 ~~which shall all be prepared by an architect or engineer, as appropriate, who~~
25 ~~is registered pursuant to section 32-121.~~
26 ~~(ii) Additional design information or documents that the agent elects~~
27 ~~to include.~~
28 ~~10. "Design services" means architect services, engineer services or~~
29 ~~landscape architect services.~~
30 ~~11. "Engineer services" means those professional engineer services that~~
31 ~~are within the scope of engineering practice as provided in title 32, chapter~~
32 ~~1.~~
33 ~~12. "Finance services" means financing for a construction services~~
34 ~~project.~~
35 ~~13. "Horizontal construction" means highways, roads, streets, bridges,~~
36 ~~canals, floodways, earthen dams and landfills.~~
37 ~~14. "Job-order-contracting" means a project delivery method in which:~~
38 ~~(a) The contract is a requirements contract for indefinite quantities~~
39 ~~of construction.~~
40 ~~(b) The construction to be performed is specified in job orders issued~~
41 ~~during the contract.~~
42 ~~(c) Finance services, maintenance services, operations services,~~
43 ~~preconstruction services, design services and other related services may be~~
44 ~~included.~~

1 ~~15. "Landscape architect services" means those professional landscape~~
2 ~~architect services that are within the scope of landscape architectural~~
3 ~~practice as provided in title 32, chapter 1.~~

4 ~~16. "Maintenance services" means routine maintenance, repair and~~
5 ~~replacement of existing facilities, structures, buildings or real property.~~

6 ~~17. "Materials":~~

7 ~~(a) Means all property, including equipment, supplies, printing,~~
8 ~~insurance and leases of property.~~

9 ~~(b) Does not include land, a permanent interest in land or real~~
10 ~~property or leasing space.~~

11 ~~18. "Operations services" means routine operation of existing~~
12 ~~facilities, structures, buildings or real property.~~

13 ~~19. "Person" means any corporation, business, individual, union,~~
14 ~~committee, club, other organization or group of individuals.~~

15 ~~20. "Preconstruction services" means advice during the design phase.~~

16 ~~21. "Procurement":~~

17 ~~(a) Means buying, purchasing, renting, leasing or otherwise acquiring~~
18 ~~any materials, services, construction or construction services.~~

19 ~~(b) Includes all functions that pertain to obtaining any material,~~
20 ~~services or construction, including description of requirements, selection~~
21 ~~and solicitation of sources, preparation and award of contract and all phases~~
22 ~~of contract administration.~~

23 ~~22. "Services":~~

24 ~~(a) Means the furnishing of labor, time or effort by a contractor or~~
25 ~~subcontractor that does not involve the delivery of a specific end product~~
26 ~~other than required reports and performance.~~

27 ~~(b) Does not include employment agreements or collective bargaining~~
28 ~~agreements.~~

29 ~~23. "Subcontractor" means a person who contracts to perform work or~~
30 ~~render service to a contractor or to another subcontractor as a part of a~~
31 ~~contract with an agent.~~

32 Sec. 10. Section 34-602, Arizona Revised Statutes, is amended to read:

33 34-602. Project delivery methods for design and construction
34 services; report

35 A. An agent may procure design services, construction and construction
36 services, as applicable, under any of the following project delivery methods:

- 37 1. Design-bid-build.
38 2. Construction-manager-at-risk.
39 3. Design-build.
40 4. Job-order-contracting.

41 B. Except as provided in section 41-2501, subsection C and section
42 41-2535, subsection D, for the design-bid-build project delivery method, the
43 agent shall procure:

- 44 1. Design services as provided in this chapter and chapter 1, article
45 1 of this title.

1 2. Construction by competitive sealed bidding pursuant to chapter 2,
2 articles 1, 2 and 3 of this title and pursuant to rules adopted by the agent
3 pursuant to section 41-2501, subsection C.

4 C. An agent shall procure construction services under the
5 construction-manager-at-risk, design-build and job-order-contracting project
6 delivery methods pursuant to this chapter.

7 D. An agent shall procure design services relating to
8 construction-manager-at-risk construction services projects pursuant to
9 section 34-102, 34-103 or 34-603, as applicable.

10 E. For job-order-contracting construction services projects, if the
11 agent does not include design services in the job-order-contracting
12 construction services contract, the agent shall procure any design services
13 relating to the job-order-contracting construction services projects under
14 the contract pursuant to section 34-102, 34-103 or 34-603, as applicable.

15 F. On or before January 15 of each year, any agent that uses
16 construction-manager-at-risk, design-build or job-order-contracting to
17 PROCURE construction services shall submit a report to the governor, the
18 president of the senate, the speaker of the house of representatives, the
19 secretary of state and the director of the department of library, archives
20 on the total benefits associated with the use of the procurement
21 methods. The report shall include a statement of costs incurred by the agent
22 in securing the services, any overall administrative benefits realized
23 through the use of the procurement methods, the number of projects begun
24 COMPLETED in the preceding calendar year using the procurement methods, and
25 the cost and description of each project, any anticipated cost savings
26 resulting from the use of that procurement method and any actual AN ESTIMATE
27 OF ANY cost savings OR OTHER BENEFITS realized through the use of that
28 procurement method. The report is a requirement for participation in
29 construction-manager-at-risk, design-build or job-order-contracting
30 procurement agreements.

31 Sec. 11. Section 34-603, Arizona Revised Statutes, is amended to read:

32 34-603. Procurement of professional services and
33 construction-manager-at-risk, design-build and
34 job-order-contracting construction services;
35 definition

36 A. ~~Except for engineer services an agent procures by direct selection~~
37 ~~or pursuant to section 34-102, subsections C and D, except for architect~~
38 ~~services, landscape architect services, assayer services, geologist services~~
39 ~~and land surveying services an agent procures by direct selection or pursuant~~
40 ~~to section 34-103, subsections C and D and Except for services an agent~~
41 ~~procures pursuant to section 34-103 OR 34-604, an agent shall procure the~~
42 ~~following services pursuant to this section:~~

- 43 1. Architect services.
- 44 2. Construction-manager-at-risk construction services.
- 45 3. Design-build construction services.

- 1 4. Engineer services.
- 2 5. Job-order-contracting construction services.
- 3 6. Landscape architect services.
- 4 7. Assayer services.
- 5 8. Geologist services.
- 6 9. Land surveying services.

7 B. An agent shall provide notice of each procurement of professional
8 services or construction services specified in this section and shall award
9 contracts on the basis of demonstrated competence and qualifications for the
10 type of professional services or construction services pursuant to the
11 procedures prescribed in this section.

12 C. In the procurement of professional services or construction
13 services pursuant to this section, an agent shall:

14 1. Issue a request for qualifications for each contract and publish
15 notice of the request for qualifications in the same manner as provided in
16 section 28-6713, subsection A. The request for qualifications shall include
17 the number of persons or firms to be included on the short list. In a
18 request for qualifications for a horizontal construction project, at least
19 three but not more than five persons or firms shall be on the short list. In
20 all other requests for qualifications, three persons or firms shall be on the
21 short list.

22 2. Initiate an appropriately qualified selection committee for each
23 contract. If the agent is procuring professional services, the agent shall
24 determine the number and qualifications of the selection committee members.
25 A selection committee for the procurement of construction services shall not
26 have more than seven members, except that, if the contract involves the agent
27 and additional governmental or private participants, the number of members
28 of the selection committee shall be increased by one for each additional
29 participant, except that the maximum number of members of the selection
30 committee is nine. The selection committee for construction services shall
31 include at least one person who is A SENIOR MANAGEMENT EMPLOYEE OF a licensed
32 contractor and one person who is an architect or an engineer who is
33 registered pursuant to section 32-121. A contractor is not required to serve
34 on the selection committee if the contract does not include construction and
35 if the contract does not require delivery of a design or a set of
36 construction documents. These members may be employees of the agent or
37 outside consultant CONSULTANTS. Outside contractors, architects and
38 engineers serving on a selection committee shall not receive compensation
39 from the agent for performing this service, but the agent may elect to
40 reimburse outside contractors, architects and engineers for travel, lodging
41 and other expenses incurred in connection with service on a selection
42 committee. A person who is a member of a selection committee shall not be
43 a contractor under the contract or provide construction, CONSTRUCTION
44 SERVICES, materials or services under the contract. The selection committee
45 shall:

1 (a) Evaluate the statements of qualifications and performance data
2 that are submitted in response to the agent's request for qualifications for
3 the proposed contract.

4 (b) If determined by the agent and included by the agent in the
5 request for qualifications, conduct discussions with at least the number of
6 persons or firms to be included on the short list as stated in the request
7 for qualifications but not more than the number of persons or firms to be
8 included on the short list plus two as specified in the request for
9 qualifications regarding the contract and the relative methods of approach
10 for furnishing the required professional services or construction services.

11 (c) In order of preference, based on criteria established and
12 published by the selection committee and included in the request for
13 qualifications, select a short list of persons or firms the selection
14 committee deems to be the most qualified to provide the professional services
15 or construction services. The number of persons or firms on the short list
16 shall be the number of persons or firms specified in the request for
17 qualifications, except that:

18 (i) If a smaller number of responsive and responsible persons or firms
19 respond to the solicitation, the selection committee may proceed with the
20 selection process with the remaining persons or firms if at least two persons
21 or firms remain or the selection committee may readvertise pursuant to this
22 subsection as the selection committee deems necessary or appropriate.

23 (ii) As to professional services only, if only one responsive and
24 responsible person or firm responds to the solicitation, the agent may
25 proceed with only one person or firm on the short list and may award the
26 contract to a single person or firm if the agent determines in writing that
27 the fee negotiated pursuant to subsection E of this section is fair and
28 reasonable and that either other prospective persons or firms had reasonable
29 opportunity to respond or there is not adequate time for a resolicitation.

30 (iii) FOR PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES, IF A PERSON
31 OR FIRM ON THE SHORT LIST WITHDRAWS OR IS REMOVED FROM THE SELECTION PROCESS
32 AND IT IS IN THE BEST INTEREST OF THE AGENT, THE SELECTION COMMITTEE MAY
33 REPLACE THAT PERSON OR FIRM WITH ANOTHER PERSON OR FIRM THAT SUBMITTED
34 QUALIFICATIONS AND THAT IS SELECTED BY THE SELECTION COMMITTEE.

35 (d) Base the selection and order of preference on demonstrated
36 competence and qualifications only.

37 (e) Not request or consider fees, price, man-hours or any other cost
38 information in the selection or order of preference.

39 ~~(f) For a request for qualifications for construction services only,~~
40 ~~not include on the short list any person or firm that includes or employs any~~
41 ~~person or firm that has provided for compensation any services relating to~~
42 ~~the project covered by the request for qualifications.~~

43 D. An agent shall award a contract for professional services or for
44 construction services to one of the persons or firms on the short list
45 prepared pursuant to subsection C of this section as provided in subsection

1 E or F of this section, except that, if fewer than the number of persons or
2 firms on the short list respond to the request for proposals pursuant to
3 subsection F of this section but at least two persons or firms on the short
4 list submit responsive proposals or if one or more of the persons or firms
5 on the short list drop out of the selection process pursuant to subsection
6 E or F of this section:

7 1. If there are three or more remaining persons or firms, the agent
8 shall proceed with the selection process.

9 2. If there are only two remaining persons or firms, as the agent
10 deems necessary and appropriate, the agent may elect to proceed with the
11 selection process with the two persons or firms or may elect to terminate the
12 selection process and may elect to readvertise pursuant to subsection C of
13 this section.

14 3. If there is only one remaining person or firm, the agent shall
15 terminate the selection process and may elect to readvertise pursuant to
16 subsection C of this section, except that as to professional services only,
17 the agent may award the contract to a single person or firm if the agent
18 determines in writing that the fee negotiated pursuant to subsection E of
19 this section is fair and reasonable and that either other prospective persons
20 or firms had reasonable opportunity to respond or there is not adequate time
21 for a resolicitation.

22 E. An agent shall enter into negotiations for a contract with the
23 highest qualified person or firm for the professional services or for the
24 construction services. The negotiations shall include consideration of
25 compensation and other contract terms that the agent determines to be fair
26 and reasonable to the agent. In making this decision, the agent shall take
27 into account the estimated value, the scope, the complexity and the nature
28 of the professional services or construction services to be rendered. If the
29 agent is not able to negotiate a satisfactory contract with the person or
30 firm considered to be the most qualified at a ~~price~~ COMPENSATION AND OTHER
31 CONTRACT TERMS the agent determines to be fair and reasonable, the agent
32 shall formally terminate negotiations with that person or firm. The agent
33 may undertake negotiations with the next most qualified person or firm in
34 sequence until an agreement is reached or a determination is made to reject
35 all persons or firms on the short list. If a contract for construction
36 services is entered into pursuant to this subsection, construction shall not
37 commence until the agent and contractor agree in writing on a fixed price or
38 a guaranteed maximum price for the construction to be commenced.

39 F. As an alternative to subsection E of this section, an agent may
40 award design-build construction services or job-order-contracting
41 construction services as follows:

42 1. The agent shall use the selection committee appointed for the
43 contract pursuant to subsection C of this section.

44 2. The agent shall issue a request for proposals to the persons or
45 firms on the short list developed pursuant to subsection C of this section.

1 3. For design-build construction services and job-order-contracting
2 construction services, the request for proposals shall include:

3 (a) The agent's project schedule and project FINAL DESIGN AND
4 CONSTRUCTION budget or life cycle budget for a procurement that includes
5 maintenance services or operations services.

6 (b) A statement that the contract will be awarded to the offeror whose
7 proposal receives the highest number of points under a scoring method.

8 (c) A description of the scoring method, including a list of the
9 factors in the scoring method and the number of points allocated to each
10 factor. The factors in the scoring method shall include:

11 (i) For design-build construction services only, demonstrated
12 compliance with the design requirements.

13 (ii) Offeror qualifications.

14 (iii) Offeror financial capacity.

15 (iv) Compliance with the agent's project schedule.

16 (v) For design-build construction services only, if the request for
17 proposals specifies that the agent will spend its project budget and not more
18 than its project budget and is seeking the best proposal for the project
19 budget, compliance of the offeror's price or life cycle price for
20 procurements that include maintenance services, operations services or
21 finance services with the agent's budget as prescribed in the request for
22 proposals.

23 (vi) For design-build construction services if the request for
24 proposals does not contain the specifications prescribed in item (v) and for
25 job-order-contracting construction services, the price or life cycle price
26 for procurements that include maintenance services, operations services or
27 finance services.

28 (vii) A- AN offeror quality management plan.

29 (viii) Other evaluation factors as determined by the agent, if any.

30 (d) For design-build construction services only, the design
31 requirements.

32 (e) A requirement that each offeror submit separately a technical
33 proposal and a price proposal and that the offeror's entire proposal be
34 responsive to the requirements in the request for proposals. For
35 design-build construction services, the price in the price proposal shall be
36 a fixed price or a guaranteed maximum price.

37 (f) A statement that in applying the scoring method the selection
38 committee will separately evaluate the technical proposal and the price
39 proposal and will evaluate and score the technical proposal before opening
40 the price proposal.

41 (g) If the agent conducts discussions pursuant to paragraph 5 of this
42 subsection, a statement that discussions will be held and a requirement that
43 each offeror submit a preliminary technical proposal before the discussions
44 are held.

1 4. If the agent determines to conduct discussions pursuant to
2 paragraph 5 of this subsection, each offeror shall submit a preliminary
3 technical proposal to the agent before those discussions are held.

4 5. If determined by the agent and included by the agent in the request
5 for proposals, the selection committee shall conduct discussions with all
6 persons or firms that submit preliminary technical proposals. Discussions
7 shall be for the purpose of clarification to assure full understanding of,
8 and responsiveness to, the solicitation requirements. Offerors shall be
9 accorded fair treatment with respect to any opportunity for discussion and
10 for clarification by the owner. Revision of preliminary technical proposals
11 shall be permitted after submission of preliminary technical proposals and
12 before award for the purpose of obtaining best and final proposals. In
13 conducting any discussions, information derived from proposals submitted by
14 competing offerors shall not be disclosed to other competing offerors.

15 6. After completion of any discussions pursuant to paragraph 5 of this
16 subsection or if no discussions are held, each offeror shall submit
17 separately the offeror's final technical proposal and its price proposal.

18 7. Before opening any price proposal, the selection committee shall
19 open the final technical proposals, evaluate the final technical proposals
20 and score the final technical proposals using the scoring method in the
21 request for proposals. No other factors or criteria may be used in the
22 evaluation and scoring.

23 8. After completion of the evaluation and scoring of all final
24 technical proposals, the selection committee shall open the price proposals,
25 evaluate the price proposals, score the price proposals and complete the
26 scoring of the entire proposals using the scoring method in the request for
27 proposals. No other factors or criteria may be used in the evaluation and
28 scoring.

29 9. The agent shall award the contract to the responsive and
30 responsible offeror whose proposal receives the highest score under the
31 method of scoring in the request for proposals. No other factors or criteria
32 may be used in the evaluation.

33 10. The contract file shall contain the basis on which the award is
34 made.

35 11. For design-build construction services only, the agent shall award
36 a stipulated fee equal to a percentage, as prescribed in the request for
37 proposals, of the agent's project FINAL DESIGN AND CONSTRUCTION budget, as
38 prescribed in the request for proposals, but not less than two-tenths of one
39 per cent of the project FINAL DESIGN AND CONSTRUCTION budget to each short
40 list offeror who provides a responsive, but unsuccessful, proposal. If the
41 agent does not award a contract, all responsive short list offerors shall
42 receive the stipulated fee BASED ON THE OWNER'S ESTIMATE OF THE PROJECT FINAL
43 DESIGN AND CONSTRUCTION BUDGET AS INCLUDED IN THE REQUEST FOR PROPOSALS. The
44 agent shall pay the stipulated fee to each offeror within ninety days after
45 the award of the initial contract or the decision not to award a contract.

1 In consideration for paying the stipulated fee, the agent may use any ideas
2 or information contained in the proposals in connection with any contract
3 awarded for the project, or in connection with a subsequent procurement,
4 without any obligation to pay any additional compensation to the unsuccessful
5 offerors. Notwithstanding the other provisions of this paragraph, an
6 unsuccessful short list offeror may elect to waive the stipulated fee. If
7 an unsuccessful short list offeror elects to waive the stipulated fee, the
8 agent may not use ideas and information contained in the offeror's proposal,
9 except that this restriction does not prevent the agent from using any idea
10 or information if the idea or information is also included in a proposal of
11 an offeror that accepts the stipulated fee.

12 G. Until AN award and execution of a contract by an agent, only the
13 name of each person or firm on the short list developed pursuant to
14 subsection C of this section shall MAY be MADE available to the public. All
15 other information received by the agent in response to the request for
16 qualifications or contained in the proposals shall be confidential in order
17 to avoid disclosure of the contents that may be prejudicial to competing
18 offerors during the selection process. The proposals shall be open to public
19 inspection after the contract is awarded and the agent has executed the
20 contract. To the extent that the offeror designates and the agent concurs,
21 trade secrets and other proprietary data contained in a proposal remain
22 confidential.

23 H. An agent may cancel a request for qualifications or a request for
24 proposals or reject in whole or in part any or all proposals as specified in
25 the solicitation if it is in the best interest of the agent. The agent shall
26 make the reasons for cancellation or rejection part of the contract file.

27 I. Notwithstanding any other law:

28 1. The contractor for construction-manager-at-risk, design-build or
29 job-order-contracting construction services is not required to be registered
30 to perform design services pursuant to title 32, chapter 1 if the person or
31 firm actually performing the design services on behalf of the contractor is
32 appropriately registered.

33 2. The contractor for construction-manager-at-risk, design-build or
34 job-order-contracting construction services is not required to be licensed
35 to perform construction pursuant to title 32, chapter 10 if the firm actually
36 performing the construction on behalf of the contractor is appropriately
37 licensed.

38 J. For job-order-contracting construction services only:

39 1. The dollar amount of an individual job order shall not be more than
40 the amount set by the agent in an action noticed pursuant to title 38,
41 chapter 3, article 3.1 or a rule adopted pursuant to title 41, chapter 6 BY
42 THE AGENT as the maximum amount of an individual job order. This maximum
43 amount shall not be more than seven hundred fifty thousand dollars.
44 Requirements shall not be artificially divided or fragmented in order to
45 constitute a job order that satisfies this requirement.

1 2. If the contractor subcontracts or intends to subcontract part or
2 all of the work under a job order and if the job order construction services
3 contract includes descriptions of standard individual tasks, standard unit
4 prices for standard individual tasks and pricing of job orders based on the
5 number of units of standard individual tasks in the job order:

6 (a) The contractor has a duty to deliver promptly to each
7 subcontractor invited to bid a coefficient to the contractor to do all or
8 part of the work under one or more job orders:

9 (i) A copy of the descriptions of all standard individual tasks on
10 which the subcontractor is invited to bid.

11 (ii) A copy of the standard unit prices for the individual tasks on
12 which the subcontractor is invited to bid.

13 (b) If not previously delivered to the subcontractor, the contractor
14 has a duty to deliver promptly the following to each subcontractor invited
15 to or that has agreed to do any of the work included in any job order:

16 (i) A copy of the description of each standard individual task that
17 is included in the job order and that the subcontractor is invited to
18 perform.

19 (ii) The number of units of each standard individual task that is
20 included in the job order and that the subcontractor is invited to perform.

21 (iii) The standard unit price for each standard individual task that
22 is included in the job order and that the subcontractor is invited to
23 perform.

24 K. Notwithstanding anything to the contrary in this chapter:

25 1. Each project for horizontal construction under a design-build
26 construction services contract and each project for horizontal construction
27 services under a construction-manager-at-risk construction services contract
28 shall be a specific, single project with a minimum construction cost of ten
29 million dollars. The estimated cost of the project shall not include the
30 cost to procure any right-of-way or other cost of condemnation.

31 2. An agent shall not procure any horizontal construction using the
32 construction-manager-at-risk, design-build or job-order-contracting method
33 of project delivery after June 30, 2007. For purposes of this paragraph, an
34 agent procures horizontal construction when the contract for the construction
35 services is executed by the agent and the contractor for the
36 construction-manager-at-risk, design-build or job-order-contracting
37 construction services. If a contract is executed for construction services
38 on or before June 30, 2007, construction services under the contract may be
39 rendered in whole or in part after June 30, 2007.

40 3. Each project under a design-build construction services contract
41 or a construction-manager-at-risk construction services contract shall be a
42 specific, single project. For the purposes of this paragraph, "specific,
43 single project" means a project that is constructed at a single location, at
44 a common location or for a common purpose.

1 L. Notwithstanding anything to the contrary in this section or this
2 title, an agent shall not:

3 1. Enter into a contract as contractor to provide
4 construction-manager-at-risk construction services, design-build construction
5 services or job-order-contracting construction services.

6 2. Contract with itself, with another agent, with this state or with
7 any other governmental unit of this state or the federal government for the
8 agent to provide construction-manager-at-risk construction services,
9 design-build construction services or job-order-contracting construction
10 services.

11 M. The prohibitions prescribed in subsection L of this section do not
12 prohibit an agent from providing construction for itself as provided by law.

13 N. For the purposes of this section, "professional services" includes
14 architect services, engineer services, landscape architect services, assayer
15 services, geologist services and land surveying services and any combination
16 of those services.

17 Sec. 12. Section 34-606, Arizona Revised Statutes, is amended to read:

18 34-606. Bid security for design-build and job-order-contracting
19 construction services

20 A. As a guarantee that the contractor will enter into a contract, bid
21 security is required for all design-build construction services and all
22 job-order-contracting construction services awarded by an agent by
23 competitive sealed proposals pursuant to section 34-603, subsection F if the
24 agent estimates that the budget for construction, excluding the cost of any
25 finance services, maintenance services, operations services, design services,
26 preconstruction services or other related services, will be more than the
27 amount prescribed in section 41-2535, subsection D. Each proposal for
28 design-build construction services or job-order-contracting construction
29 services shall be accompanied by a certified check, cashier's check or surety
30 bond. ~~in THE BID SECURITY AMOUNT FOR DESIGN-BUILD CONSTRUCTION SERVICES~~
31 ~~SHALL BE an amount equal to ten per cent of the agent's budget for~~
32 ~~construction, excluding any finance services, maintenance services,~~
33 ~~operations services, design services, preconstruction services or other~~
34 ~~related services, for the project as stated in the request for~~
35 ~~proposals. , except that, THE BID SECURITY AMOUNT for job-order-contracting~~
36 ~~construction services, the bid security amount shall be the amount determined~~
37 ~~by the agent and stated in the request for proposals and shall not be more~~
38 ~~than ten per cent of the agent's estimated budget for construction during the~~
39 ~~first year of the job-order-contracting contract.~~

40 B. The agent shall return the certified check, cashier's check or
41 surety bond to the contractors whose proposals are not accepted and to the
42 successful contractor on the execution of satisfactory payment and
43 performance bonds, INSURANCE and the contract as provided in this chapter.

44 C. Notwithstanding any other statute, the surety bond shall be
45 executed solely by a surety company or companies holding a certificate of

1 authority to transact surety business in this state issued by the director
2 of the department of insurance pursuant to title 20, chapter 2, article 1.
3 The bond shall not be executed by an individual surety or sureties, even if
4 the requirements of section 7-101 are satisfied.

5 D. The conditions and provisions of the surety bond regarding the
6 surety's obligations shall follow the following form:

7 Now, therefore, if the obligee accepts the proposal of the
8 principal and the principal enters into a contract with the
9 obligee in accordance with the terms of the proposal and gives
10 the bonds and certificates of insurance as specified in the
11 standard specifications with good and sufficient surety for the
12 faithful performance of the contract and for the prompt payment
13 of labor and materials furnished in the prosecution of the
14 contract, or in the event of the failure of the principal to
15 enter into the contract and give the bonds and certificates of
16 insurance, if the principal pays to the obligee the difference
17 not to exceed the penalty of the bond between the amount
18 specified in the proposal and any larger amount for which the
19 obligee may contract in good faith with another party to perform
20 the work covered by the proposal, this obligation is void.
21 Otherwise it remains in full force and effect. Provided,
22 however, that this bond is executed pursuant to section 34-606,
23 Arizona Revised Statutes, and all liabilities on this bond shall
24 be determined in accordance with the provisions of the section
25 to the extent as if it were copied at length in this agreement.

26 E. If the request for proposals requires security, noncompliance
27 requires that the agent reject the proposal for noncompliance with the
28 security requirement, unless the agent determines that the bid fails to
29 comply in a nonsubstantial manner with the security requirements.

30 F. After the agent opens the proposals, the proposals are irrevocable
31 for the period specified in the request for proposals, except as provided in
32 section 34-603, subsection F. If a proposer is permitted to withdraw its
33 proposal before award, no action may be had against the proposer or the bid
34 security.

35 G. All bonds given by a contractor and surety pursuant to this
36 section, regardless of their actual form, are deemed by law to be the form
37 required and set forth in this section.

38 Sec. 13. Section 34-610, Arizona Revised Statutes, is amended to read:
39 34-610. Accounting standards; statutory applicability

40 A. Any construction by a county pursuant to this chapter shall comply
41 with the uniform accounting system prescribed for counties by the auditor
42 general pursuant to section 41-1279.21. Any construction by a city or a town
43 pursuant to this chapter shall comply with generally accepted accounting
44 principles.

1 B. Any building, structure, addition or alteration may be constructed
2 without complying with this chapter if the construction, including
3 construction of buildings or structures on public or private property, is
4 required as a condition of development of private property and is authorized
5 by section 9-463.01 or 11-806.01. For the purposes of this subsection,
6 building does not include police, fire, school, library or other public
7 buildings.

8 C. ~~Sections 34-102, 34-103 and SECTION 34-104, section 34-201,~~
9 subsections A through H, J and K and sections ~~34-202, 34-203, 34-221, 34-222,~~
10 ~~34-223 and 34-224~~ do not apply to procurement by an agent of
11 construction-manager-at-risk construction services, design-build construction
12 services and job-order-contracting construction services.

13 D. Section 34-201, subsections I and L and sections 34-225 and 34-226
14 apply to procurement by an agent of construction-manager-at-risk construction
15 services, design-build construction services and job-order-contracting
16 construction services.

17 Sec. 14. Section 34-611, Arizona Revised Statutes, is amended to read:

18 34-611. Failure to comply; civil penalty

19 An agent who knowingly AND INTENTIONALLY violates this chapter is
20 liable for a civil penalty of not more than five thousand dollars for each
21 violation. All monies collected from the civil penalty shall be transmitted
22 ~~to the state treasurer for deposit~~ DEPOSITED, PURSUANT TO SECTIONS 35-146 AND
23 35-147, in the state general fund. The attorney general shall bring an
24 action to recover the penalty in the name of this state in the superior court
25 in the county in which the violation occurred. The attorney general shall
26 bring any appropriate civil action to enjoin a threatened or pending
27 violation of this chapter.

28 Sec. 15. Repeal

29 Section 34-612, Arizona Revised Statutes, is repealed.

30 Sec. 16. Section 41-2503, Arizona Revised Statutes, is amended to
31 read:

32 41-2503. Definitions

33 In this chapter, unless the context otherwise requires:

34 1. "Architect services" means those professional architect services
35 that are within the scope of architectural practice as provided in title 32,
36 chapter 1.

37 2. "Business" means any corporation, partnership, individual, sole
38 proprietorship, joint stock company, joint venture or other private legal
39 entity.

40 3. "Change order" means a written order which is signed by a
41 procurement officer and which directs the contractor to make changes that the
42 changes clause of the contract authorizes the procurement officer to order.

1 4. "Construction":

2 (a) Means the process of building, altering, repairing, improving or
3 demolishing any public structure or building, or other public improvements
4 of any kind to any public real property.

5 (b) Does not include the routine operation, routine repair or routine
6 maintenance of existing facilities, structures, buildings or real property.

7 5. "Construction-manager-at-risk" means a project delivery method in
8 which:

9 (a) There is a separate contract for design services and a separate
10 contract for construction services.

11 (b) The contract for construction services may be entered into at the
12 same time as the contract for design services or at a later time.

13 (c) Design and construction of the project may be in sequential phases
14 or concurrent phases.

15 (d) Finance services, maintenance services, operations services,
16 preconstruction services and other related services may be included.

17 6. "Construction services" means either of the following for
18 construction-manager-at-risk, design-build and job-order-contracting project
19 delivery methods:

20 (a) Construction, excluding services, through the
21 construction-manager-at-risk or job-order-contracting project delivery
22 methods.

23 (b) A combination of construction and, as elected by the purchasing
24 agency, one or more related services, such as finance services, maintenance
25 services, operations services, design services and preconstruction services,
26 as those services are authorized in the definitions of
27 construction-manager-at-risk, design-build or job-order-contracting in this
28 section.

29 7. "Contract" means all types of state agreements, regardless of what
30 they may be called, for the procurement of materials, services or
31 construction or the disposal of materials.

32 8. "Contract modification" means any written alteration in the terms
33 and conditions of any contract accomplished by mutual action of the parties
34 to the contract.

35 9. "Contractor" means any person who has a contract with a state
36 governmental unit.

37 10. "Data" means documented information, regardless of form or
38 characteristic.

39 11. "Department" means the department of administration.

40 12. "Design-bid-build" means a project delivery method in which:

41 (a) There is a sequential award of two separate contracts.

42 (b) The first contract is for design services.

43 (c) The second contract is for construction.

44 (d) Design and construction of the project are in sequential phases.

1 (e) Finance services, maintenance services and operations services are
2 not included.

3 13. "Design-build" means a project delivery method in which:

4 (a) There is a single contract for design services and construction
5 services.

6 (b) Design and construction of the project may be in sequential phases
7 or concurrent phases.

8 (c) Finance services, maintenance services, operations services,
9 ~~design services~~, preconstruction services and other related services may be
10 included.

11 14. "Design requirements":

12 (a) Means at a minimum the purchasing agency's written description of
13 the project or service to be procured, including:

14 (i) The required features, functions, characteristics, qualities and
15 properties.

16 (ii) The anticipated schedule, including start, duration and
17 completion.

18 (iii) The estimated budgets applicable to the specific procurement for
19 design and construction and, if applicable, for operation and maintenance.

20 (b) May include:

21 (i) Drawings and other documents illustrating the scale and
22 relationship of the features, functions and characteristics of the project,
23 which shall all be prepared by an architect or engineer, as appropriate, who
24 is registered pursuant to section 32-121.

25 (ii) Additional design information or documents that the purchasing
26 agency elects to include.

27 15. "Design services" means architect services, engineer services or
28 landscape architect services.

29 16. "Designee" means a duly authorized representative of the director.

30 17. "Director" means the director of the department of administration.

31 18. "Employee" means an individual drawing a salary from a state
32 governmental unit, whether elected or not, and any noncompensated individual
33 performing personal services for any state governmental unit.

34 19. "Engineer services" means those professional engineer services that
35 are within the scope of engineering practice as provided in title 32, chapter
36 1.

37 20. "Finance services" means financing for a construction services
38 project.

39 21. "General services administration contract" means contracts awarded
40 by the United States government general services administration.

41 22. "Grant" means the furnishing of financial or other assistance,
42 including state funds or federal grant funds, by any state governmental unit
43 to any person for the purpose of supporting or stimulating educational,
44 cultural, social or economic quality of life, if there is no substantial
45 involvement between the state governmental unit and the recipient during

1 performance. Grant does not include an agreement whose primary purpose is
2 to procure a specific end product in the form of materials, services or
3 construction. A contract resulting from such an agreement is not a grant but
4 a procurement contract.

5 23. "Job-order-contracting" means a project delivery method in which:

6 (a) The contract is a requirements contract for indefinite quantities
7 of construction.

8 (b) The construction to be performed is specified in job orders issued
9 during the contract.

10 (c) Finance services, maintenance services, operations services,
11 preconstruction services, design services and other related services may be
12 included.

13 24. "Landscape architect services" means those professional landscape
14 architect services that are within the scope of landscape architectural
15 practice as provided in title 32, chapter 1.

16 25. "Maintenance services" means routine maintenance, repair and
17 replacement of existing facilities, structures, buildings or real property.

18 26. "Materials":

19 (a) Means all property, including equipment, supplies, printing,
20 insurance and leases of property.

21 (b) Does not include land, a permanent interest in land or real
22 property or leasing space.

23 27. "Operations services" means routine operation of existing
24 facilities, structures, buildings or real property.

25 28. "Owner" means a state purchasing agency or state governmental unit.

26 29. "Person" means any corporation, business, individual, union,
27 committee, club, other organization or group of individuals.

28 30. "Preconstruction services" means advice during the design phase.

29 31. "Procurement":

30 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
31 any materials, services, construction or construction services.

32 (b) Includes all functions that pertain to obtaining any material,
33 services, or construction OR CONSTRUCTION SERVICES, including description of
34 requirements, selection and solicitation of sources, preparation and award
35 of contract, and all phases of contract administration.

36 32. "Procurement officer":

37 (a) Means any person duly authorized to enter into and administer
38 contracts and make written determinations with respect to the contracts.

39 (b) Includes an authorized representative acting within the limits of
40 the authorized representative's authority.

41 33. "Purchasing agency" means any state governmental unit which is
42 authorized by this chapter or rules adopted pursuant to this chapter, or by
43 way of delegation from the director, to enter into contracts.

1 34. "Services":

2 (a) Means the furnishing of labor, time or effort by a contractor or
3 subcontractor which does not involve the delivery of a specific end product
4 other than required reports and performance.

5 (b) Does not include employment agreements or collective bargaining
6 agreements.

7 35. "State governmental unit" means any department, commission,
8 council, board, bureau, committee, institution, agency, government
9 corporation or other establishment or official of the executive branch or
10 corporation commission of this state.

11 36. "Subcontractor" means a person who contracts to perform work or
12 render service to a contractor or to another subcontractor as a part of a
13 contract with a state governmental unit.

14 37. "Using agency" means any state governmental unit which utilizes any
15 materials, services or construction procured under this chapter.

16 Sec. 17. Section 41-2534, Arizona Revised Statutes, as amended by Laws
17 2000, chapter 135, section 13, is amended to read:

18 41-2534. Competitive sealed proposals

19 A. If, under rules adopted pursuant to this chapter, the director
20 determines in writing that the use of competitive sealed bidding is either
21 not practicable or not advantageous to this state, a contract for materials
22 or services may be entered into by competitive sealed proposals. This
23 section does not apply to procurement of construction or construction
24 services. Construction services shall be procured pursuant to section
25 41-2537 Or 41-2578. The director may provide by rule that it is either not
26 practicable or not advantageous to this state to procure specified types of
27 materials or services by competitive sealed bidding.

28 B. Proposals shall be solicited through a request for proposals.

29 C. Adequate public notice of the request for proposals shall be given
30 in the same manner as provided in section 41-2533.

31 D. Proposals shall be opened publicly at the time and place designated
32 in the request for proposals. The name of each offeror and such other
33 relevant information as is specified by rule shall be publicly read and
34 recorded in accordance with regulations promulgated RULES ADOPTED by the
35 director. All other information contained in the proposals shall be
36 confidential so as to avoid disclosure of contents prejudicial to competing
37 offerors during the process of negotiation. The proposals shall be open for
38 public inspection after contract award. To the extent the bidder OFFEROR
39 designates and the state concurs, trade secrets or other proprietary data
40 contained in the bid documents shall remain confidential in accordance with
41 rules adopted by the director.

42 E. The request for proposals shall state the relative importance of
43 price and other evaluation factors. Specific numerical weighting is not
44 required.

F. As provided in the request for proposals, and under rules adopted by the director, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

G. The award shall be made to the responsive and responsible offeror whose proposal is determined in writing to be the most advantageous to this state taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the most advantageous proposal if ~~a competing offeror located outside this state is not subject to a transaction privilege or use tax of a political subdivision of this state.~~ The contract file shall contain the basis on which the award is made.

Sec. 18. Repeal

Section 41-2534, Arizona Revised Statutes, as amended by Laws 2000, chapter 316, section 7, is repealed.

Sec. 19. Section 41-2573, Arizona Revised Statutes, is amended to read:

41-2573. Bid security

A. As a guarantee that the contractor will enter into a contract, bid security is required for all construction procured pursuant to section 41-2533 and all construction services procured pursuant to section 41-2578, subsection F if the purchasing agency estimates that the budget for construction, excluding the cost of any finance services, maintenance services, operations services, and ~~any~~ DESIGN SERVICES, PRECONSTRUCTION SERVICES OR other related services included in the contract, will be more than the amount established by section 41-2535, subsection D. Bid security shall be a certified check, cashier's check or surety bond.

B. Bid security shall be submitted in the following amounts:

1. For design-bid-build construction services, ten per cent of the contractor's bid.

2. For design-build construction services awarded by competitive sealed proposals pursuant to section 41-2578, subsection F, ten per cent of the purchasing agency's construction budget for the project as stated in the request for proposals, excluding finance services, maintenance services, operations services, DESIGN SERVICES, PRECONSTRUCTION SERVICES or any other related services included in the contract.

1 3. For job-order-contracting construction services awarded by
2 competitive sealed proposals pursuant to section 41-2578, subsection F, the
3 amount prescribed by the purchasing agency in the request for proposals, but
4 not more than ten per cent of the purchasing agency's estimated budget for
5 construction during the first year under the contract, excluding any finance
6 services, maintenance services, operations services, DESIGN SERVICES,
7 PRECONSTRUCTION SERVICES or any other related services included in the
8 contract.

9 C. Nothing in this section prevents a state governmental unit from
10 requiring such bid security in relation to any construction contract. The
11 surety bond shall be executed and furnished as required by title 34, chapter
12 2 OR CHAPTER 6, AS APPLICABLE, and the conditions and provisions of the
13 surety bond regarding the surety's obligations shall follow the form required
14 by section 34-201 OR 34-606, AS APPLICABLE.

15 D. If the invitation for bids or request for proposals requires
16 security, noncompliance requires that the bid be rejected unless, pursuant
17 to rules, it is determined that the bid fails to comply in a nonsubstantial
18 manner with the security requirements.

19 E. After the bids or proposals are opened, they are irrevocable for
20 the period specified in the invitation for bids or request for proposals,
21 except as provided in section 41-2533, subsection F and section 41-2578
22 subsection F. If a bidder is permitted to withdraw its bid before award, no
23 action may be had against the bidder or the bid security.

24 Sec. 20. Section 41-2574, Arizona Revised Statutes, is amended to
25 read:

26 41-2574. Contract performance and payment bonds

27 A. The following bonds or security is required and is binding on the
28 parties to the contract if the value of a construction award exceeds the
29 amount established by section 41-2535:

30 1. A performance bond that is executed and furnished as required under
31 title 34, chapter 2, article 2 or chapter 6, as applicable, in an amount
32 equal to one hundred per cent of the price specified in the contract
33 conditioned on the faithful performance of the contract in accordance with
34 the plans, specifications and conditions of the contract, except that, for
35 job-order-contracting construction services, the performance bond shall cover
36 the full amount of construction under the job-order-contracting construction
37 services contract, shall not include any design services, preconstruction
38 services, finance services, maintenance services, operations services or
39 other related services included in the contract, shall initially be based on
40 the purchasing agency's estimate of the amount of construction that will be
41 done under the contract and, for multiyear contracts, may be a single bond
42 for the full term of the contract or a separate bond for each year of the
43 contract, as determined by the purchasing agency, and except that for
44 construction-manager-at-risk construction services and design-build
45 construction services, the amount of the performance bond shall be the price

1 of construction services, ~~excluding~~ AND SHALL NOT INCLUDE the cost of any
2 design services, preconstruction services, finance services, maintenance
3 services, operations services and other related services included in the
4 contract. The performance bond shall cover performance of construction
5 included in the contract and shall not cover performance of any design
6 services, preconstruction services, finance services, maintenance services,
7 operations services or other related services included in the contract. This
8 bond is solely for the protection of this state. The conditions and
9 provisions of the performance bond regarding the surety's obligations shall
10 follow the form required under section 34-222, subsection G or section
11 34-608, subsection G, as applicable.

12 2. A payment bond that is executed and furnished as required by title
13 34, chapter 2, article 2 or chapter 6, as applicable, in an amount equal to
14 one hundred per cent of the price specified in the contract for the
15 protection of all persons supplying labor or material to the contractor or
16 its subcontractors for the performance of the construction provided for in
17 the contract, except that, for job-order-contracting construction services,
18 the payment bond shall cover the full amount of construction under the
19 job-order-contracting construction services contract, shall not include any
20 design services, preconstruction services, finance services, maintenance
21 services, operations services or other related services included in the
22 contract, shall initially be based on the purchasing agency's estimate of the
23 amount of construction that will be done under the contract and, for
24 multiyear contracts, may be a single bond for the full term of the contract
25 or a separate bond for each year of the contract, as determined by the
26 purchasing agency, and except that, for construction-manager-at-risk
27 construction services and design-build construction services, the amount of
28 the payment bond shall be the price of construction services, ~~excluding~~ AND
29 SHALL NOT INCLUDE the cost of any design services, preconstruction services,
30 finance services, maintenance services, operations services or any other
31 related services included in the contract. The conditions and provisions of
32 the payment bond regarding the surety's obligations shall follow the form
33 required under section 34-222, subsection F or section 34-608, subsection F,
34 as applicable.

35 B. For design-bid-build construction, the bonds prescribed in
36 subsection A of this section shall be provided on and at the same time as
37 execution of the CONSTRUCTION contract. For construction-manager-at-risk,
38 design-build and job-order-contracting construction services, the bonds
39 prescribed in subsection A of this section shall be provided only on and at
40 the same time as execution of a contract or an amendment to a contract that
41 commits the contractor to provide construction for a fixed price, guaranteed
42 maximum price or other fixed amount within a designated time frame. For
43 design-build or job-order-contracting construction services, if a person or
44 firm that is not licensed to perform construction pursuant to title 32,
45 chapter 10 has a construction services contract with the purchasing agency

1 and has contracted for the construction portion of the construction services
2 contract with a PERSON OR firm that is licensed to perform construction
3 pursuant to title 32, chapter 10:

4 1. The person or firm holding the contract shall provide the payment
5 bond and the performance bond.

6 2. IF the PERSON OR firm licensed to perform construction is not
7 required to provide THE PERSON OR FIRM HOLDING THE CONTRACT, THE PERSON OR
8 FIRM LICENSED TO PERFORM THE CONSTRUCTION SHALL BE A COPRINCIPAL ON the
9 payment bond or AND the performance bond. BOTH COPRINCIPALS SHALL BE DEEMED
10 THE CONTRACTOR AS DEFINED IN SECTION 34-222.

11 C. If the prime contract or specifications require any persons
12 supplying labor or materials in the prosecution of the work to furnish
13 payment or performance bonds, these bonds shall be executed solely by a
14 surety company or companies holding a certificate of authority to transact
15 surety business in this state issued by the director of the department of
16 insurance pursuant to title 20, chapter 2, article 1. Notwithstanding the
17 provisions of any other statute, the bonds shall not be executed by an
18 individual surety or sureties, even if the requirements of section 7-101 are
19 satisfied.

20 Sec. 21. Section 41-2578, Arizona Revised Statutes, is amended to
21 read:

22 41-2578. Procurement of specified professional and construction
23 services; definition

24 A. Architect services, assayer services, construction-manager-at-risk
25 construction services, design-build construction services, engineer services,
26 job-order-contracting construction services, geologist services, landscape
27 architect services and land surveying services shall be procured as provided
28 in this section except as authorized by sections 41-2535, 41-2536 and
29 41-2537.

30 B. This state shall provide notice, in accordance with rules, of each
31 procurement of professional services or construction services specified in
32 this section and shall award contracts on the basis of demonstrated
33 competence and qualifications for the type of professional services or
34 construction services pursuant to procedures prescribed in this section.

35 C. In the procurement of these professional services or construction
36 services pursuant to this section:

37 1. For procurement of professional services if the contract amount is
38 one hundred thousand dollars or less, the director shall encourage PERSONS
39 OR firms engaged in the lawful practice of the profession to submit annually
40 a statement of qualifications and experience. The director or the head of
41 the purchasing agency shall initiate an appropriately qualified selection
42 committee for each contract in accordance with rules adopted by the director
43 or purchasing agency. The selection committee shall evaluate current
44 statements of qualifications and experience on file with the director or
45 purchasing agency, together with those that may be submitted by other PERSONS

1 OR firms regarding the proposed contract. If possible, the selection
2 committee shall conduct discussions with at least three PERSONS OR firms
3 regarding the contract and the relative methods of furnishing the required
4 services and, if possible, shall select, in order of preference and based on
5 criteria established and published by the selection committee, a short list
6 of at least three of the PERSONS OR firms deemed to be the most qualified to
7 provide the services required. The selection committee:

8 (a) Shall base the selection of the short list and order of preference
9 on demonstrated competence and qualifications only.

10 (b) Shall not request or consider fees, price, man-hours or any other
11 cost information in the selection of the short list or order of preference.

12 2. For professional services if the contract amount is more than one
13 hundred thousand dollars and for all construction services, the purchasing
14 agency shall follow the procedure prescribed in this paragraph.
15 Notwithstanding paragraph 1 of this subsection, for professional services
16 otherwise subject to paragraph 1 of this subsection, the purchasing agency
17 may elect to follow the procedures prescribed in this paragraph. The
18 purchasing agency shall issue a request for qualifications for each contract
19 and publish notice of the request for qualifications in the same manner as
20 provided in section 41-2533, subsection C. The director or head of a
21 purchasing agency shall initiate an appropriately qualified selection
22 committee for each contract in accordance with rules adopted by the director.
23 If procuring professional services, the purchasing agency shall determine the
24 number and qualifications of the selection committee members. A selection
25 committee for the procurement of construction services shall not have more
26 than seven members and shall include at least one person who is A SENIOR
27 MANAGEMENT EMPLOYEE OF a licensed contractor and one person who is an
28 architect or an engineer who is registered pursuant to section 32-121. A
29 contractor is not required to serve on the selection committee if the
30 contract does not include construction and if the contract does not require
31 delivery of a design or a set of construction documents. These members may
32 be employees of the purchasing agency or outside consultants. Outside
33 contractors, architects and engineers serving on a selection committee shall
34 not receive compensation from the purchasing agency for performing this
35 service, but the purchasing agency may elect to reimburse outside
36 contractors, architects and engineers for travel, lodging and other expenses
37 incurred in connection with service on a selection committee. A person who
38 is a member of a selection committee shall not be a contractor under the
39 contract or provide construction, CONSTRUCTION SERVICES, materials or
40 services under the contract. The selection committee shall:

41 (a) Evaluate the statements of qualifications and performance data
42 that are submitted in response to the purchasing agency's request for
43 qualifications for the proposed contract.

44 (b) If determined by the purchasing agency and included by the
45 purchasing agency in the request for qualifications, conduct discussions with

1 at least three but not more than five persons or firms as specified in the
2 request for qualifications regarding the contract and the relative methods
3 of approach for furnishing the required professional services or construction
4 services.

5 (c) In order of preference, based on criteria established and
6 published by the selection committee and included in the request for
7 qualifications, select a short list of three of the persons or firms the
8 selection committee deems to be the most qualified to provide the
9 professional services or construction services. If only two responsible and
10 responsive persons or firms respond to the solicitation, the selection
11 committee may proceed with the selection process with those two persons or
12 firms or the selection committee may readvertise pursuant to this subsection
13 as the selection committee deems necessary or appropriate. FOR PROFESSIONAL
14 SERVICES ONLY, IF ONLY ONE RESPONSIVE AND RESPONSIBLE PERSON OR FIRM RESPONDS
15 TO THE SOLICITATION, THE PURCHASING AGENCY MAY PROCEED WITH ONLY ONE PERSON
16 OR FIRM ON THE SHORT LIST AND MAY AWARD THE CONTRACT TO A SINGLE PERSON OR
17 FIRM IF THE PURCHASING AGENCY DETERMINES IN WRITING THAT THE FEE NEGOTIATED
18 PURSUANT TO SUBSECTION E OF THIS SECTION IS FAIR AND REASONABLE AND EITHER
19 OTHER PROSPECTIVE PERSONS OR FIRMS HAD A REASONABLE OPPORTUNITY TO RESPOND
20 OR THERE IS NOT ADEQUATE TIME FOR A RESOLICITATION.

21 (d) Base the selection of the short list and order of preference on
22 demonstrated competence and qualifications only.

23 (e) Not request or consider fees, price, man-hours or any other cost
24 information in the selection of the short list or order of preference.

25 ~~(f) For a request for qualifications for construction services only,~~
26 ~~not include on the short list any person or firm that includes or employs any~~
27 ~~person or firm that has provided for compensation any services relating to~~
28 ~~the project covered by the request for qualifications.~~

29 D. The director shall award a contract for professional services or
30 construction services to one of the persons or firms on the short list
31 prepared pursuant to subsection C of this section as provided in subsection
32 E or F of this section, except that: —

33 1. If only two persons or firms that the selection committee
34 determines are qualified respond to the request for proposals pursuant to
35 subsection F of this section or if one of the three persons or firms drops
36 out of the selection process pursuant to subsection E or F of this section
37 so that only two persons or firms remain on the short list, the purchasing
38 agency, as the purchasing agency deems necessary or appropriate, may elect
39 to proceed with the selection process with the two persons or firms or elect
40 to readvertise pursuant to subsection C of this section.

41 2. FOR PROFESSIONAL SERVICES ONLY, IF ONLY ONE RESPONSIVE AND
42 RESPONSIBLE PERSON OR FIRM RESPONDS TO THE SOLICITATION, THE PURCHASING
43 AGENCY MAY AWARD THE CONTRACT TO A SINGLE PERSON OR FIRM IF THE PURCHASING
44 AGENCY DETERMINES IN WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION
45 E OF THIS SECTION IS FAIR AND REASONABLE AND EITHER OTHER PROSPECTIVE PERSONS

1 OR FIRMS HAD A REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE
2 TIME FOR A RESOLICITATION.

3 E. The procurement officer shall enter into negotiations for a
4 contract with the highest qualified person or firm for the professional
5 services or construction services. The negotiations shall include
6 consideration of compensation and other contract terms that the officer
7 determines to be fair and reasonable to this state. In making this decision,
8 the procurement officer shall take into account the estimated value, the
9 scope, the complexity and the nature of the professional services or
10 construction services to be rendered. If the procurement officer is unable
11 to negotiate a satisfactory contract with the person or firm considered to
12 be the most qualified, at a price COMPENSATION and on other contract terms
13 the procurement officer determines to be fair and reasonable to this state,
14 the procurement officer shall formally terminate negotiations with that
15 person or firm. The procurement officer may undertake negotiations with the
16 next most qualified person or firm in sequence until an agreement is reached
17 or a determination is made to reject all persons or firms on the short list.
18 If a contract for construction services is entered into pursuant to this
19 subsection, construction shall not commence until the purchasing agency and
20 contractor agree in writing on a fixed price or a guaranteed maximum price
21 for the construction to be commenced.

22 F. As an alternative to subsection E of this section, the procurement
23 officer may award design-build construction services or job-order-contracting
24 construction services as follows:

25 1. The procurement officer shall use the selection committee appointed
26 for the contract pursuant to subsection C of this section.

27 2. The procurement officer shall issue a request for proposals to the
28 persons or firms on the short list developed pursuant to subsection C of this
29 section.

30 3. For design-build construction services and job-order-contracting
31 construction services, the request for proposals shall include:

32 (a) The purchasing agency's project schedule and project FINAL DESIGN
33 AND CONSTRUCTION budget or life cycle budget for a procurement that includes
34 maintenance services or operations services.

35 (b) A statement that the contract will be awarded to the person or
36 firm whose proposal receives the highest number of points under a scoring
37 method.

38 (c) A description of the scoring method, including a list of the
39 factors in the scoring method and the number of points allocated to each
40 factor. The factors in the scoring method shall include:

41 (i) For design-build construction services only, demonstrated
42 compliance with the design requirements.

43 (ii) Offeror qualifications.

44 (iii) Offeror financial capacity.

45 (iv) Compliance with the purchasing agency's project schedule.

1 (v) For design-build construction services only, if the request for
2 proposals specifies that the purchasing agency will spend its project budget
3 and not more than its project budget and is seeking the best proposal for the
4 project budget, compliance of the offeror's price or life cycle price for
5 procurements that include maintenance services, operations services or
6 finance services with the purchasing agency's budget as prescribed in the
7 request for proposals.

8 (vi) For design-build construction services if the request for
9 proposals does not contain the specifications prescribed in item (v) and for
10 job-order-contracting construction services, the price or life cycle price
11 for procurements that include maintenance services, operations services or
12 finance services.

13 (vii) A- AN offeror quality management plan.

14 (viii) Other evaluation factors as determined by the purchasing
15 agency, if any.

16 (d) For design-build construction services only, the design
17 requirements.

18 (e) A requirement that each offeror submit separately a technical
19 proposal and a price proposal and that the offeror's entire proposal be
20 responsive to the requirements in the request for proposals. For
21 design-build construction services, the price in the price proposal shall be
22 a fixed price or a guaranteed maximum price.

23 (f) A statement that in applying the scoring method the selection
24 committee will separately evaluate the technical proposal and the price
25 proposal and will evaluate and score the technical proposal before opening
26 the price proposal.

27 (g) If the purchasing agency conducts discussions pursuant to
28 paragraph 5 of this subsection, a statement that discussions will be held and
29 a requirement that each offeror submit a preliminary technical proposal
30 before the discussions are held.

31 4. If the purchasing agency determines to conduct discussions pursuant
32 to paragraph 5 of this subsection, each offeror shall submit a preliminary
33 technical proposal to the purchasing agency before those discussions are
34 held.

35 5. If determined by the purchasing agency and included by the
36 purchasing agency in the request for proposals, the selection committee shall
37 conduct discussions with all persons or firms that submit preliminary
38 technical proposals. Discussions shall be for the purpose of clarification
39 to assure full understanding of, and responsiveness to, the solicitation
40 requirements. Offerors shall be accorded fair treatment with respect to any
41 opportunity for discussion and for clarification by the owner. Revision of
42 preliminary technical proposals shall be permitted after submission of
43 preliminary technical proposals and before award for the purpose of obtaining
44 best and final proposals. In conducting any discussions, information derived

1 from proposals submitted by competing offerors shall not be disclosed to
2 other competing offerors.

3 6. After completion of any discussions pursuant to paragraph 5 of this
4 subsection or if no discussions are held, each offeror shall submit
5 separately its final technical proposal and its price proposal.

6 7. Before opening any price proposal, the selection committee shall
7 open the final technical proposals, evaluate the final technical proposals
8 and score the final technical proposals using the scoring method in the
9 request for proposals. No other factors or criteria may be used in the
10 evaluation and scoring.

11 8. After completion of the evaluation and scoring of all final
12 technical proposals, the selection committee shall open the price proposals,
13 evaluate the price proposals, score the price proposals and complete the
14 scoring of the entire proposals using the scoring method in the request for
15 proposals. No other factors or criteria may be used in the evaluation and
16 scoring.

17 9. The procurement officer shall award the contract to the responsive
18 and responsible offeror whose proposal receives the highest score under the
19 method of scoring in the request for proposals. No other factors or criteria
20 may be used in the evaluation.

21 10. The contract file shall contain the basis on which the award is
22 made.

23 11. For design-build construction services only, the procurement
24 officer shall award a stipulated fee equal to a percentage, as prescribed in
25 the request for proposals, of the purchasing agency's project FINAL DESIGN
26 AND CONSTRUCTION budget, as prescribed in the request for proposals, but not
27 less than two-tenths of one per cent of the project FINAL DESIGN AND
28 CONSTRUCTION budget to each short list offeror who provides a responsive, but
29 unsuccessful, proposal. If the procurement officer does not award a
30 contract, all responsive short list offerors shall receive the stipulated fee
31 BASED ON THE PURCHASING AGENCY'S ESTIMATE OF THE PROJECT FINAL DESIGN AND
32 CONSTRUCTION BUDGET AS INCLUDED IN THE REQUEST FOR PROPOSALS. The
33 procurement officer shall pay the stipulated fee to each offeror within
34 ninety days after the award of the initial contract or the decision not to
35 award a contract. In consideration for paying the stipulated fee, the
36 procurement officer may use any ideas or information contained in the
37 proposals in connection with any contract awarded for the project, or in
38 connection with a subsequent procurement, without any obligation to pay any
39 additional compensation to the unsuccessful offerors. Notwithstanding the
40 other provisions of this paragraph, an unsuccessful short list offeror may
41 elect to waive the stipulated fee. If an unsuccessful short list offeror
42 elects to waive the stipulated fee, the purchasing agency may not use ideas
43 and information contained in the offeror's proposal, except that this
44 restriction does not prevent the purchasing agency from using any idea or

1 information if the idea or information is also included in a proposal of an
2 offeror that accepts the stipulated fee.

3 G. Until award and execution of a contract by a purchasing agency,
4 only the name of each person or firm on the short list developed pursuant to
5 subsection C of this section shall MAY be MADE available to the public. All
6 other information received by the purchasing agency in response to the
7 request for qualifications or contained in the proposals shall be
8 confidential in order to avoid disclosure of the contents that may be
9 prejudicial to competing offerors during the selection process. The
10 proposals shall be open to public inspection after the contract is awarded
11 and the purchasing agency has executed the contract. To the extent that the
12 offeror designates and the purchasing agency concurs, trade secrets and other
13 proprietary data contained in a proposal remain confidential.

14 H. A purchasing agency may cancel a request for qualifications or a
15 request for proposals or reject in whole or in part any or all SUBMISSIONS
16 OF QUALIFICATIONS OR proposals as specified in the solicitation if it is in
17 the best interest of the purchasing agency. The purchasing agency shall make
18 the reasons for cancellation or rejection part of the contract file.

19 I. Notwithstanding any other law:

20 1. The contractor for construction-manager-at-risk, design-build or
21 job-order-contracting construction services is not required to be registered
22 to perform design services pursuant to title 32, chapter 1 if the person or
23 firm actually performing the design services on behalf of the contractor is
24 appropriately registered.

25 2. The contractor for construction-manager-at-risk, design-build or
26 job-order-contracting construction services is not required to be licensed
27 to perform construction pursuant to title 32, chapter 10 if the firm actually
28 performing the construction on behalf of the contractor is appropriately
29 licensed.

30 3. Each project under a design-build construction services contract
31 or a construction-manager-at-risk construction services contract shall be a
32 specific, single project. For the purposes of this paragraph, "specific,
33 single project" means a project that is constructed at a single location, at
34 a common location or for a common purpose.

35 J. For job-order-contracting construction services only:

36 1. The dollar amount of an individual job order shall not be more than
37 the amount set by the director in a rule adopted pursuant to chapter 6 of
38 this title as the maximum amount of an individual job order, except that the
39 amount for school districts in rules adopted pursuant to section 15-213,
40 subsection A shall be the same amount as adopted by the director and, without
41 affecting the scope of section 41-2501, subsection N or any similar
42 provision, the amount for the Arizona board of regents, the legislative and
43 judicial branches of state government and the state compensation fund shall
44 be the amount adopted by the Arizona board of regents, the legislative or
45 judicial branches of state government or the state compensation fund,

1 respectively, either in an action noticed pursuant to title 38, chapter 3,
2 article 3.1 or ~~a~~ AN ADOPTED rule adopted pursuant to chapter 6 of this
3 title. This maximum amount shall not be more than seven hundred fifty
4 thousand dollars. Requirements shall not be artificially divided or
5 fragmented in order to constitute a job order that satisfies this
6 requirement.

7 2. If the contractor subcontracts or intends to subcontract part or
8 all of the work under a job order and if the job-order construction services
9 contract includes descriptions of standard individual tasks, standard unit
10 prices for standard individual tasks and pricing of job orders based on the
11 number of units of standard individual tasks in the job order:

12 (a) The contractor has a duty to deliver promptly to each
13 subcontractor invited to bid a coefficient to the contractor to do all or
14 part of the work under one or more job orders:

15 (i) A copy of the descriptions of all standard individual tasks on
16 which the subcontractor is invited to bid.

17 (ii) A copy of the standard unit prices for the individual tasks on
18 which the subcontractor is invited to bid.

19 (b) If not previously delivered to the subcontractor, the contractor
20 has a duty to deliver promptly the following to each subcontractor invited
21 to or that has agreed to do any of the work included in any job order:

22 (i) A copy of the description of each standard individual task that
23 is included in the job order and that the subcontractor is invited to
24 perform.

25 (ii) The number of units of each standard individual task that is
26 included in the job order and that the subcontractor is invited to perform.

27 (iii) The standard unit price for each standard individual task that
28 is included in the job order and that the subcontractor is invited to
29 perform.

30 K. Notwithstanding anything to the contrary in this section or this
31 title, a purchasing agency shall not:

32 1. Enter into a contract as contractor to provide
33 construction-manager-at-risk construction services, design-build construction
34 services or job-order-contracting construction services.

35 2. Contract with itself, with another purchasing agency, with this
36 state or with any other governmental unit of this state or the federal
37 government for the purchasing agency to provide construction-manager-at-risk
38 construction services, design-build construction services or
39 job-order-contracting construction services.

40 L. The prohibitions prescribed in subsection K of this section do not
41 prohibit a purchasing agency from providing construction for itself as
42 provided by law.

43 M. For the purposes of this section, "professional services" includes
44 architect services, engineer services, landscape architect services, assayer

1 services, geologist services and land surveying services and any combination
2 of those services.

3 Sec. 22. Section 41-2579, Arizona Revised Statutes, is amended to
4 read:

5 41-2579. Project delivery methods for design and construction
6 services; report

7 A. A purchasing agency may procure design services, construction and
8 construction services, as applicable, under any of the following project
9 delivery methods:

- 10 1. Design-bid-build.
- 11 2. Construction-manager-at-risk.
- 12 3. Design-build.
- 13 4. Job-order-contracting.

14 B. For the design-bid-build project delivery method, the director
15 shall procure:

- 16 1. Design services pursuant to section 41-2578.
- 17 2. Construction by competitive sealed bidding, except as otherwise
18 provided in section 41-2532.

19 C. The director shall procure construction services under the
20 construction-manager-at-risk, design-build and job-order-contracting project
21 delivery methods pursuant to section 41-2578.

22 D. The director shall procure design services relating to a
23 construction-manager-at-risk construction services project pursuant to
24 section 41-2578.

25 E. For job-order-contracting construction services projects, if the
26 director does not include design services in the job-order-contracting
27 construction services contract, the director shall procure any design
28 services relating to job-order-contracting construction services projects
29 under the contract pursuant to section 41-2578.

30 F. On or before January 15 of each year, any state entity that uses
31 construction-manager-at-risk, design-build or job-order-contracting to
32 procure construction services in a calendar year shall transmit to the
33 governor, ~~the president of the senate, the speaker of the house of~~
34 ~~representatives, the secretary of state and the director of the department~~
35 ~~of library, archives and public records~~ a report on the total benefits
36 associated with the use of construction-manager-at-risk, design-build or
37 job-order-contracting to procure construction services. The report shall
38 include ~~a statement of costs incurred in securing the services, any overall~~
39 ~~administrative benefits realized through the use of the procurement methods,~~
40 the number of projects begun COMPLETED in the preceding calendar year using
41 the procurement methods, and the cost and description of each project, ~~any~~
42 ~~anticipated cost savings resulting from the use of the procurement methods~~
43 ~~and any actual~~ AN ESTIMATE OF ANY cost savings OR OTHER BENEFITS realized
44 through the use of the procurement method.

1 Sec. 23. Retroactivity; limitation

2 A. In the procurement of construction or professional services under
3 section 34-603 or 41-2578, Arizona Revised Statutes, a person or firm that,
4 before the effective date of this act, provided for compensation any services
5 relating to the procurement shall not be disqualified from being included on
6 a short list or being awarded a contract based solely on the ground that
7 those services were provided.

8 B. A person or firm that, before the effective date of this act, was
9 prohibited from being included on a short list for procurement of
10 construction or professional services pursuant to section 34-603 or section
11 41-2578, Arizona Revised Statutes, based solely on the fact that the person
12 or firm provided for compensation any services relating to the procurement
13 may not maintain an action against the entity that procured the construction
14 or professional services based solely on the ground that this act repeals the
15 prohibition.

16 Sec. 24. Emergency

17 This act is an emergency measure that is necessary to preserve the
18 public peace, health or safety and is operative immediately as provided by
19 law.

APPROVED BY THE GOVERNOR APRIL 23, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2001.

Passed the House March 15, 20 01,

Passed the Senate April 11, 20 01,

by the following vote: 53 Ayes,

by the following vote: 29 Ayes,

0 Nays, 7 Not Voting
with emergency
Jake Flake
Speaker of the House
Pro Tempore
Norman L. Moore
Chief Clerk of the House

1 Nays, 0 Not Voting
with Emergency
Randall Smith
President of the Senate
Channing Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20 _____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20 _____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2425

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State
this _____ day of _____, 20 _____,

at _____ o'clock _____ M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 17, 2001,

by the following vote: 53 Ayes,

0 Nays, 7 Not Voting
with emergency

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

17 day of April, 2001,

at 11:06 o'clock A M.

[Signature]
Secretary to the Governor

Approved this 23 day of

April, 2001,

at 6:48 o'clock P M.

[Signature]
Governor of Arizona

H.B. 2425

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 24 day of April, 2001,

at 4:50 o'clock P M.

[Signature]
Secretary of State